

Invitation to Negotiate (ITN) No. XXX
FOR
COMPRESSED NATURAL GAS

PRE-PROPOSAL CONFERENCE TO BE HELD:

_____, 2013 at __:00 AM (local time)
111 NW 1st Street, 13th Floor, Conf. Rm. __, Miami, Florida

ISSUED BY MIAMI-DADE COUNTY:

Internal Services Department, Procurement Management Division
for
Miami-Dade Transit

COUNTY CONTACT FOR THIS SOLICITATION:

Name and Title: Jesus Lee, Procurement Contracting Officer
Address: 111 NW 1st Street, Suite 1300, Miami, Florida 33128
Telephone: (305) 375-4264
E-mail: FJL@miamidade.gov

PROPOSALS ARE DUE AT THE CLERK OF THE BOARD NO LATER THAN:

_____, 2013 at 2:00 PM (local time)
at
CLERK OF THE BOARD
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 202
Miami, Florida 33128-1983

The Clerk of the Board business hours are 8:00 a.m. to 4:30 p.m., Monday through Friday. Additionally, the Clerk of the Board is closed on holidays observed by the County.

All proposals received and time stamped by the Clerk of the Board prior to the proposal submittal deadline shall be accepted as timely submitted. The circumstances surrounding all proposals received and time stamped by the Clerk of the Board after the proposal submittal deadline will be evaluated by the procuring department in consultation with the County Attorney's Office to determine whether the proposal will be accepted as timely. Proposals will be opened promptly at the time and date specified. The responsibility for submitting a proposal on or before the stated time and date is solely and strictly the responsibility of the Proposer. The County will in no way be responsible for delays caused by mail delivery or caused by any other occurrence. All expenses involved with the preparation and submission of proposals to the County, or any work performed in connection therewith, shall be borne by the Proposer(s).

The submittal of a proposal by a Proposer will be considered by the County as constituting an offer by the Proposer to perform the required services at the stated prices. A Proposer may submit a modified proposal to replace all or any portion of a previously submitted proposal up until the proposal due date. The County will only consider the latest version of the proposal.

Requests for additional information or inquiries must be made in writing and received by the County's contact person for this Solicitation. The County will issue responses to inquiries and any changes to this Solicitation it deems necessary in written addenda issued prior to the proposal due date. Proposers who obtain copies of this Solicitation from sources other than the County's Internal Services Department website at www.miamidade.gov/dpm or the Vendor Assistance Unit risk the possibility of not receiving addenda and are solely responsible for those risks.

1.0 PROJECT OVERVIEW AND GENERAL TERMS AND CONDITIONS

1.1 Introduction

Miami-Dade County, hereinafter referred to as the County, as represented by Miami-Dade Transit (MDT) is soliciting proposals to develop public private partnership that allows MDT to use Compressed Natural Gas (CNG) in its fleet. This partnership includes the following:

- a. Design, build, operate and maintain fuel / service stations (stations) with an option to purchase CNG
- b. Upgrade of MDT's maintenance facilities
- c. Purchase/Lease of buses
- d. Possible Revenue by selling CNG to third parties

The anticipated schedule for this Solicitation is as follows:

Solicitation issued:

Pre-Proposal Conference:

See front cover for date, time and place. Attendance is recommended but not mandatory. If you need a sign language interpreter or materials in accessible format for this event, please call the ADA Coordinator at (305) 375-2013 or email hjwrig@miamidade.gov at least five days in advance.

Deadline for receipt of questions:

Proposal due date:

Evaluation process:

Projected award date:

See front cover for date, time and place.

1.2 Definitions

The following words and expressions used in this Solicitation shall be construed as follows, except when it is clear from the context that another meaning is intended:

1. The word "Contractor" to mean the Proposer that receives any award of a contract from the County as a result of this Solicitation, also to be known as "the prime Contractor".
2. The word "County" to mean Miami-Dade County, a political subdivision of the State of Florida.
3. The word "Proposer" to mean the person, firm, entity or organization, as stated on Form A-1, submitting a response to this Solicitation.
4. The words "Scope of Work" to mean Section 2.0 of this Solicitation, which details the work to be performed by the Contractor.
5. The word "Solicitation" to mean this Invitation to Negotiate (ITN) document, and all associated addenda and attachments.
6. The word "Subcontractor" to mean any person, firm, entity or organization, other than the employees of the Contractor, who contracts with the Contractor to furnish labor, or labor and materials, in connection with the Services to the County, whether directly or indirectly, on behalf of the Contractor.
7. The words "Work", "Services", "Program", or "Project" to mean all matters and things that will be required to be done by the Contractor in accordance with the Scope of Work and the terms and conditions of this Solicitation.

1.3 General Proposal Information

The County may, at its sole and absolute discretion, reject any and all or parts of any or all responses; accept parts of any and all responses; further negotiate project scope and fees; postpone or cancel at any time this Solicitation process; or waive any irregularities in this Solicitation or in the responses received as a result of this process. A proposal shall be the Proposer's firm commitment to provide the goods and services solicited in the manner requested in the Solicitation and described in the proposal. In the event that a Proposer wishes to take an exception to any of the terms of this Solicitation, the Proposer shall clearly indicate the exception in its proposal. No exception shall be taken where the Solicitation specifically states that exceptions may not be taken. Further, no exception shall be allowed that, in the County's sole discretion, constitutes a material

deviation from the requirements of the Solicitation. Proposals taking such exceptions may, in the County's sole discretion, be deemed nonresponsive. The County reserves the right to request and evaluate additional information from any respondent regarding respondent's responsibility after the submission deadline as the County deems necessary.

Proposals shall be irrevocable until contract award unless the proposal is withdrawn. A proposal may be withdrawn in writing only, addressed to the County contact person for this Solicitation, prior to the proposal due date or upon the expiration of 180 calendar days after the opening of proposals.

Proposers are hereby notified that all information submitted as part of, or in support of proposals will be available for public inspection after opening of proposals, in compliance with Chapter 119, Florida Statutes, popularly known as the "Public Record Law". The Proposer shall not submit any information in response to this Solicitation which the Proposer considers to be a trade secret, proprietary or confidential. The submission of any information to the County in connection with this Solicitation shall be deemed conclusively to be a waiver of any trade secret or other protection, which would otherwise be available to Proposer. In the event that the Proposer submits information to the County in violation of this restriction, either inadvertently or intentionally, and clearly identifies that information in the proposal as protected or confidential, the County may, in its sole discretion, either (a) communicate with the Proposer in writing in an effort to obtain the Proposer's written withdrawal of the confidentiality restriction or (b) endeavor to redact and return that information to the Proposer as quickly as possible, and if appropriate, evaluate the balance of the proposal. Under no circumstances shall the County request the withdrawal of the confidentiality restriction if such communication would in the County's sole discretion give to such Proposer a competitive advantage over other proposers. The redaction or return of information pursuant to this clause may render a proposal non-responsive.

Any Proposer who, at the time of proposal submission, is involved in an ongoing bankruptcy as a debtor, or in a reorganization, liquidation, or dissolution proceeding, or if a trustee or receiver has been appointed over all or a substantial portion of the property of the Proposer under federal bankruptcy law or any state insolvency law, may be found non-responsible. To request a copy of any ordinance, resolution and/or administrative order cited in this Solicitation, the Proposer must contact the Clerk of the Board at (305) 375-5126.

1.4 Cone of Silence

Pursuant to Section 2-11.1(t) of the Miami-Dade County Code, as amended, a "Cone of Silence" is imposed upon each RFP or RFQ after advertisement and terminates at the time a written recommendation is issued. The Cone of Silence prohibits any communication regarding RFPs or RFQs between, among others:

- potential Proposers, service providers, lobbyists or consultants **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff, County Commissioners or their respective staffs;
- the County Commissioners or their respective staffs **and** the County's professional staff including, but not limited to, the County Mayor and the County Mayor's staff; or
- potential Proposers, service providers, lobbyists or consultants, any member of the County's professional staff, the Mayor, County Commissioners or their respective staffs **and** any member of the respective selection committee.

The provisions do not apply to, among other communications:

- oral communications with the staff of the Vendor Assistance Unit, the responsible Contracting Officer, provided the communication is limited strictly to matters of process or procedure already contained in the solicitation document;
- oral communications at pre-proposal conferences, oral presentations before selection committees, contract negotiations during any duly noticed public meeting, public presentations made to the Board of County Commissioners during any duly noticed public meeting; or
- communications in writing at any time with any county employees, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP or RFQ documents.

When the Cone of Silence is in effect, all potential vendors, service providers, bidders, lobbyists and consultants shall file a copy of any written correspondence concerning the particular RFP or RFQ with the Clerk of the Board, which shall be made available to any person upon request. The County shall respond in writing (if County deems a response necessary) and file a copy with the Clerk of the Board, which shall be made available to any person upon request. Written communications may be in the form of e-mail, with a copy to the Clerk of the Board at clerkbcc@miamidade.gov.

1.5 Public Entity Crimes

Pursuant to Paragraph 2(a) of Section 287.133, Florida Statutes, a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a proposal for a contract to provide any goods or services to a public entity; may not submit a proposal on a contract with a public entity for the construction or repair of a public building or public work; may not submit proposals on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity; and, may not transact business with any public entity in excess of the threshold amount provided in Section 287.017 for Category Two for a period of thirty-six (36) months from the date of being placed on the convicted vendor list.

1.6 Lobbyist Contingency Fees

- a) In accordance with Section 2-11.1(s) of the Code of Miami-Dade County, after May, 16, 2003, no person may, in whole or in part, pay, give or agree to pay or give a contingency fee to another person. No person may, in whole or in part, receive or agree to receive a contingency fee.
- b) A contingency fee is a fee, bonus, commission or non-monetary benefit as compensation which is dependent on or in any way contingent upon the passage, defeat, or modification of: 1) any ordinance, resolution, action or decision of the County Commission; 2) any action, decision or recommendation of the County Mayor or any County board or committee; or 3) any action, decision or recommendation of any County personnel during the time period of the entire decision-making process regarding such action, decision or recommendation which foreseeably will be heard or reviewed by the County Commission or a County board or committee.

1.7 Collusion

In accordance with Section 2-8.1.1 of the Code of Miami-Dade County, where two (2) or more related parties, as defined herein, each submit a proposal for any contract, such proposals shall be presumed to be collusive. The foregoing presumption may be rebutted by the presentation of evidence as to the extent of ownership, control and management of such related parties in preparation and submittal of such proposals. Related parties shall mean Proposer or the principals thereof which have a direct or indirect ownership interest in another Proposer for the same contract or in which a parent company or the principals thereof of one Proposer have a direct or indirect ownership interest in another Proposer for the same contract. Proposals found to be collusive shall be rejected. Proposers who have been found to have engaged in collusion may be considered non-responsible, and may be suspended or debarred, and any contract resulting from collusive bidding may be terminated for default.

1.8 Contract Measures

The Disadvantage Business Enterprise (DBE) requirements of 49 CFR Part 26 applies to this solicitation. The Stated Goal for participation by DBE firms is fifteen percent (15%). Refer to Attachment 8 for definitions, explanations, and instructions.

2.0 SCOPE OF WORK

See Attachment 1

3.0 RESPONSE REQUIREMENTS

3.1 Submittal Requirements

In response to this Solicitation, Proposer should **return the entire completed Proposal Submission Package** (see Attachment 2). Proposers should carefully follow the format and instructions outlined therein. All documents and information must be fully completed and signed as required.

The proposal shall be written in sufficient detail to permit the County to conduct a meaningful evaluation of the proposed services. However, overly elaborate responses are not requested or desired.

4.0 SOLICITATION PROCESS

4.1 Invitation to Negotiate

For the purposes of obtaining proposals from interested parties, the County is utilizing an Invitation to Negotiate (ITN) process as described below. The ITN process differs from a standard Request for Proposals (RFP) process in that it provides for more flexibility, and reduces certain restrictions inherent in a request for proposals process without eliminating competitiveness.

4.2 ITN Process

The ITN process is comprised of two steps.

Step 1: INITIAL PROPOSAL

Proposals will first be reviewed by a Technical Advisory Committee (TAC), chaired by Internal Services Department. The TAC will submit its findings to the Selection Committee (SC). The TAC will be comprised of County and other technical staff, as needed, to perform these reviews and will be available to the SC throughout the evaluation process. The SC will be comprised of high-level County Officials. The SC will evaluate and rank proposals on criteria listed below and will take into consideration the findings of TAC. SC will determine which proposal(s) remain in consideration for Step 2 of ITN based on, among other considerations, value to the County, scores in clusters and/or maintaining competition.

The criteria are itemized with their respective weights for a maximum total of four hundred (400) points per SC member.

<u>Criteria</u>	<u>Points</u>
1. Proposer's relevant experience, qualifications, and past Performance	100
2. Relevant experience and qualifications of key personnel, including key personnel of subcontractors, that will be assigned to this project, and experience and qualifications of subcontractors	100
3. Proposer's approach/overall plan to providing the services requested in this Solicitation	200

Step 2: FINAL PROPOSAL

For this step, the County will seek proposals **only** from proposers who remain in consideration after completion of Step 1. Proposals will first be reviewed by the TAC who will submit its findings and detailed technical report to the SC. The SC will evaluate the proposals and take into consideration the findings of TAC to give recommendation(s) to the Mayor for negotiations. SC may request oral presentations (See Section 4.4 below) prior to making this recommendation to the Mayor.

The proposals will be evaluated based on the criterion below:

Criterion

Proposer's detailed approach, resources, implementation, financial strength, capacity and pricing/financing for the proposed term.

4.3 Review of Proposals for Responsiveness (Applies to both steps)

Each proposal will be reviewed to determine if the proposal is responsive to the submission requirements outlined in this Solicitation. A responsive proposal is one which follows the requirements of this Solicitation, includes all documentation, is submitted in the format outlined in this Solicitation, is of timely submission, and has the appropriate signatures as required on each document. Failure to comply with these requirements may result in the proposal being deemed non-responsive.

4.4 Oral Presentations

Upon completion of the evaluation as indicated in step 2 above, SC may choose to conduct an oral presentation. (See **Form A-2** regarding registering speakers in the proposal for oral presentations.)

4.5 Negotiations

The County may award a contract on the basis of offers received (in response to Step 2 above), without discussions. Therefore, each offer should contain the Proposer's best terms from a monetary and technical standpoint.

The SC will evaluate and submit the results of their evaluation to the County Mayor or designee with their recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate. The County Mayor or designee, at their sole discretion, may direct negotiations with one Proposer, negotiations with multiple Proposers, and/or may request best and final offers. In any event the County engages in negotiations with a single or multiple Proposers and/or requests best and final offers, the discussions may include price and conditions attendant to price.

Notwithstanding the foregoing, if the County and said Proposer(s) cannot reach agreement on a contract, the County reserves the right to terminate negotiations and may, at the County Mayor's or designee's discretion, begin negotiations with the next Proposer(s). This process may continue until a contract acceptable to the County has been executed or all proposals are rejected. No Proposer shall have any rights against the County arising from such negotiations or termination thereof.

Any Proposer(s) recommended for negotiations may be required to provide the following to the County:

- Information concerning any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performance of the services to be rendered herein, in which the Proposer, any of its employees or subcontractors is or has been involved within the last three years.
- Collusion Affidavit, in accordance with Sections 2-8.1.1 of the Miami-Dade County Code. (If a Proposer fails to submit the required Collusion Affidavit, said Proposer shall be ineligible for award.)

A notarized signed letter from FGT stating the capacity available to the proposer shall be provided by the Proposer(s) recommended for negotiations.

4.6 Contract Award

Any contract, resulting from this Solicitation, will be submitted to the County Mayor or designee for approval. All Proposers will be notified in writing when the County Mayor or designee makes an award recommendation. The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed by the County to be in the best interest of the County. Notwithstanding the rights of protest listed below, the County's decision of whether to make the award and to which Proposer shall be final.

4.7 Rights of Protest

A recommendation for contract award or rejection of all proposals may be protested by a Proposer in accordance with the procedures contained in Sections 2-8.3 and 2-8.4 of the County Code, as amended, and as established in Implementing Order No. 3-21.

5.0 TERMS AND CONDITIONS

The anticipated form of agreement is attached. The terms and conditions summarized below are of special note and can be found in their entirety in the agreement:

a) **Vendor Registration**

Prior to being recommended for award, the Proposer shall complete a Miami-Dade County Vendor Registration Package. Effective June 1, 2008, the new Vendor Registration Package, including a Uniform Affidavit Packet (Affidavit form), must be completed. The Vendor Registration Package, including all affidavits can be obtained by downloading from the website at http://www.miamidade.gov/DPM/vendor_registration.asp or from the Vendor Assistance Unit at 111 N.W. 1st Street, 13th Floor, Miami, FL. The recommended Proposer shall affirm that all information submitted with its Vendor Registration Package is current, complete and accurate, at the time they submitted a response to the Solicitation, by completing an Affirmation of Vendor Affidavit form.

b) **Insurance Requirements**

The Contractor shall furnish to the County, Internal Services Department, Procurement Management Division, prior to the commencement of any work under any agreement, Certificates of Insurance which indicate insurance coverage has been obtained that meets the stated requirements.

6.0 ATTACHMENTS

Attachment 1: Scope of Services

Attachment 2: Proposal Submission Package

Attachment 3: Form A-1 (Cover page) and Affidavits/Acknowledgements A-2 through A-6

Attachment 4: Proposer Information

Attachment 5: Form of Agreement

Attachment 6: Federally Required Clauses

Attachment 7: Federal Transit Administration Affidavits

Attachment 8: DBE/Affirmative Action Requirements

Attachment 9: DBE Forms

Attachment A: MDT 40-Foot and 60-Foot Coach Specifications (Specifications are subject to change by the County. This attachment is for informational purposes only.)

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ATTACHMENT 1
Scope of Services

ATTACHMENT 1 Scope of Services

Miami-Dade County, hereinafter referred to as the County, as represented by Miami-Dade Transit (MDT) is soliciting proposals to develop a public private partnership that allows MDT to use Compressed Natural Gas (CNG) in its fleet. This partnership includes:

- a. Design, build, operate and maintain fuel / service stations (stations) with an option to purchase CNG
- b. Upgrade of MDT's maintenance facilities
- c. Purchase/Lease of buses
- d. Possible Revenue by selling CNG to third parties

MDT desires a complete "turnkey" and cost effective approach to implement this partnership. The ultimate goal is to reduce MDT's dependencies on petroleum-based diesel fuel.

Below is an overview of the anticipated scope of work required to design, build, operate and maintain stations, upgrade MDT's maintenance facilities to accommodate CNG buses, purchase / lease of up to 300 buses and possible revenue by selling CNG to third parties:

1. Provide for all work required for a fully functional fueling and servicing station to service up to 300 buses per facility. The scope of work includes all natural gas and electrical utility infrastructure development, installation of underground transmission lines, all electrical work, modification of existing facilities, and restoration. Provide thorough inspection of the facilities (maintenance and fueling) and the infrastructure at each location including all existing buildings, structures, and equipment, for all conditions that may impact the work, including all permits, approvals, fees, etc. to meet applicable codes and regulations and to implement all required modifications in accordance with best industry practices.
2. The conversion at Central facility will be followed by the conversion of two other MDT bus facilities at the Coral Way and North East bus divisions. Similar work is anticipated for those two additional facilities. It is anticipated that the completion of the two other facilities will coincide with receipt of new CNG buses (see #4 below for additional information) to replace older diesel buses as determined by FTA bus retirement eligibility guidelines (see MDT Chart No. 1).
3. Design, build, operate, and maintain natural gas fueling stations on MDT property that will meet present and future bus fleet CNG fueling requirements and modify existing buildings and equipment to comply with applicable codes and regulations. Evaluate and implement applicable best practices from the EPA

Natural Gas Star Program, to minimize loss of product and associated methane emissions (<http://www.epa.gov/gasstar/tools/recommended.html>). The County may purchase CNG from the awarded Proposer or may purchase from other sources.

4. Purchase or Lease new CNG powered transit buses, per MDT specifications, for MDT to operate in revenue service.
5. Provide electrically powered compression system with sufficient number of compressors sized to meet MDT fleet fueling requirements with high pressure gas lines with one compressor not in operation.
6. Provide back-up generator to fully power the compression system in the event of loss of electrical power.
7. Provide compression system for continuous fueling of four buses simultaneously at 5000psig and sufficient CFM to completely fuel the buses in 6.5 minutes, assuming each bus requires 80 DGE.
8. Install four CNG dispensers at the fuel island, one at each traffic lane. The operation will include fuel dispensers with required credentials to initiate operation, notification when fueling is completed, and a display and electronic communication of the amount of fuel dispensed to MDT's inventory system.
9. All servicing transactions including fuel, fluids, operator and vehicle data to be communicated through the E. J. Ward fueling system.
10. At each fuel island install a 2,500 gallon CNG engine oil storage tank, pump, plumbing and four overhead hose reels, one at each traffic lane. Provide additional plumbing for CNG engine oil hose reels for the maintenance shops as needed.
11. Install plumbing and overhead hose reels for coolant, engine oil, and transmission fluid at each traffic lane of each fuel island. Shop air and water also to be available at the fuel island.
12. Provide a bus vacuuming system with hoses for cleaning the buses at each lane.
13. Properly illuminate each fuel island for nighttime servicing of the buses.
14. Provide appropriate office space for each fuel island for MDT personnel.
15. Provide all labor, materials, equipment, expendables, and incidentals to maintain the fuel facility. MDT will be responsible for replenishing the engine oil, transmission fluid, and coolant as needed.
16. Provide necessary electricity (separate meter) to operate the entire fueling operation.
17. The fueling facility operates 24 hours per day, seven days per week.
18. Response time for malfunctions at the fuel islands is within an 8 hour period of notification, unless such malfunction results in loss or degradation of fueling capacity or poses a safety hazard, in which case the response is immediate.
19. Ensure that all equipment is installed in accordance to the manufacturer's requirements.
20. Execute of the work not to impede MDT's normal fueling and maintenance operations.
21. Pay for all federal, state and local permits, fees, and licenses necessary to complete the project

MDT Chart 1 – MDT Bus Fleet Replacement Eligibility Schedule

Feb-13	358	Jul-18	5
Jan-14	56	Jan-19	6
Jul-14	55	Jul-19	12
Jan-15	66	Jan-20	38
Jul-15	51	Jul-20	35
Jan-16	34	Jan-21	13
Jul-16	13	Jul-21	9
Jan-17	7	Jan-22	27
Jul-17	13	Jul-22	7
Jan-18	8	Jan-23	5
Total: 818			

MDT Facilities with details:

Facility/Location	Number of Buses	Primary Fueling Hours*	Number of Fueling Lanes	Stage Time per Bus (1)	Maximum Fill Time per Bus (2)	Total Stage and Fuel Time per Bus (3) 1 + 2 = 3	DGE per Bus – empty tank
Central O & I Facility 3431 NW 31 Street Miami, Florida 33142	279	7:00pm – 3:00am 8 hrs.	4	1.5 min.	6.5 min	8 min	138 DGE
Coral Way Facility 2775 SW 74 Avenue Miami, Florida 33155	275	7:00pm – 3:00am 8 hrs.	4	1.5 min.	6.5 min	8 min	138 DGE
Northeast Facility 360 NE 185 Street Miami, Florida 33179	264	7:00pm – 3:00am 8 hrs.	4	1.5 min.	6.5 min	8 min	138 DGE

*Service Islands are open 24 hours, 365 days a year

Liquidated Damages

Liquidated damages in the amount of \$300.00 per bus per day shall be paid by contractor to the County for each bus not fueled due to any contractor's system or performance failure.

**ATTACHMENT 2
PROPOSAL SUBMISSION PACKAGE**

ATTACHMENT 2 PROPOSAL SUBMISSION PACKAGE

(A) In response to the Step 1 of this Solicitation, Proposer shall RETURN THIS ENTIRE PROPOSAL SUBMISSION PACKAGE as follows:

1. Form A-1, Cover Page of Proposal and Affidavits/Acknowledgements (See Attachment 3)

Form A-1: Complete and sign (by Proposer or representative of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer) as required.

Complete and sign the following forms:

Form A-3, Acknowledgement of Addenda
Form A-6, Subcontractor/Supplier Listing

2. Proposer Information (See Attachment 4)

Complete following the requirements therein.

Note: The Proposer Information document is available in an electronic format (Word) by submitting a written request via e-mail to the County contact person for this Solicitation.

(B) In response to the Step 2 of this Solicitation, Proposer shall RETURN THIS ENTIRE PROPOSAL SUBMISSION PACKAGE as follows

1. Form A-1, Cover Page of Proposal and Affidavits/Acknowledgements (See Attachment 3)

Form A-1: Complete and sign (by Proposer or representative of the Proposer who is legally authorized to enter into a contractual relationship in the name of the Proposer) as required.

Complete and sign the following forms:

Form A-2, Lobbyist Registration for Oral Presentations
Form A-3, Acknowledgement of Addenda
Form A-5, Fair Subcontracting Policies
Form A-6, Subcontractor/Supplier Listing

2. Federal Transit Administration Affidavits (See Attachment 7)

EXHIBIT FED-DB-1, Certification Regarding Debarment, Suspension, Ineligibility And Voluntary

Exclusion (Lower Tier Covered Transaction)
EXHIBIT FED-LB1, Lobbying Certification
EXHIBIT FED-BY2, Buy America Certificate of Compliance or Non-Compliance
EXHIBIT FED-DA1, Certification of Performance of Safety-Sensitive Functions
Information for MDT Bidders List
Bus Testing

3. Disadvantage Business Enterprise (DBE) Forms (See Attachment 9)

4. Proposer Information (See Attachment 4)

Complete following the requirements therein.

Note: The Proposer Information document is available in an electronic format (Word) by submitting a written request via e-mail to the County contact person for this Solicitation.

(C) Submit (Applies to Both Steps)

- One original hardcopy format of complete Proposal Submission Package and twelve (12) copies
- A compact disc (CD) of the complete package (except the required forms/affidavits) as one single searchable document: pdf or word)

by the Proposal Due Date (see front cover of Solicitation) in a sealed envelope/container addressed as follows:

Proposer's Name
Proposer's Address
Proposer's Telephone Number

Clerk of the Board
Stephen P. Clark Center
111 NW 1st Street, 17th Floor, Suite 202
Miami, FL 33128-1983

ITN No.:
STEP No.:
ITN Title:
Proposal Due Date:

ATTACHMENT 3
COVER PAGE OF PROPOSAL AND AFFIDAVITS/ACKNOWLEDGEMENTS

Form A-1

PROPOSER'S NAME (Name of firm, entity or organization):		
FEDERAL EMPLOYER IDENTIFICATION NUMBER:		
NAME AND TITLE OF PROPOSER'S CONTACT PERSON:		
Name:		Title:
MAILING ADDRESS:		
Street Address: _____		
City, State, Zip: _____		
TELEPHONE: (____) _____	FAX: (____) _____	E-MAIL ADDRESS: _____
PROPOSER'S ORGANIZATIONAL STRUCTURE:		
_____ Corporation _____ Partnership _____ Proprietorship _____ Joint Venture _____ Other (Explain): _____		
IF CORPORATION:		
Date Incorporated/Organized: _____ State Incorporated/Organized: _____		
States registered in as foreign corporation: _____		
PROPOSER'S SERVICE OR BUSINESS ACTIVITIES OTHER THAN WHAT THIS SOLICITATION REQUESTS FOR:		
LIST NAMES OF PROPOSER'S SUBCONTRACTORS OR SUBCONSULTANTS FOR THIS PROJECT:		
LOCAL CERTIFIED SERVICE-DISABLED VETERAN BUSINESS ENTERPRISE:		
<p>A Local Certified Service-Disabled Veteran Business Enterprise is a firm that is a) a local business pursuant to Section 2-8.5 of the Code of Miami-Dade County and b) prior to proposal submittal is certified by the State of Florida Department of Management Services as a service-disabled veteran business enterprise pursuant to Section 295.187 of the Florida Statutes. At the time of proposal submission, the Local Certified Service-Disabled Veteran Business Enterprise must affirm in writing its compliance with the certification requirements of Section 295.187 of the Florida Statutes and submit said affirmation and a copy of the actual certification along with the proposal submission.</p> <p><input type="checkbox"/> Place a checkmark here only if affirming Proposer is a certified Local Certified Service-Disabled Veteran Business Enterprise. A copy of the required certification must be submitted with the proposal.</p>		
CRIMINAL CONVICTION DISCLOSURE:		

Pursuant to Miami-Dade County Ordinance No. 94-34, any individual who has been convicted of a felony during the past ten years and any corporation, partnership, joint venture or other legal entity having an officer, director, or executive who has been convicted of a felony during the past ten years shall disclose this information prior to entering into a contract with or receiving funding from the County.

☐ Place a checkmark here **only** if Proposer has such conviction to disclose.

Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List:

By executing this proposal through a duly authorized representative, the proposer certifies that the proposer is not on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, as those terms are used and defined in sections 287.135 and 215.473 of the Florida Statutes. In the event that the proposer is unable to provide such certification but still seeks to be considered for award of this solicitation, the proposer shall execute the proposal through a duly authorized representative and shall also initial this space: _____. In such event, the proposer shall furnish together with its proposal a duly executed written explanation of the facts supporting any exception to the requirement for certification that it claims under Section 287.135 of the Florida Statutes. The proposer agrees to cooperate fully with the County in any investigation undertaken by the County to determine whether the claimed exception would be applicable. The County shall have the right to terminate any contract resulting from this solicitation for default if the proposer is found to have submitted a false certification or to have been placed on the Scrutinized Companies for Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List.

PROPOSER'S AUTHORIZED SIGNATURE

The undersigned hereby certifies that this proposal is submitted in response to this solicitation.

THE EXECUTION OF THIS FORM CONSTITUTES THE UNEQUIVOCAL OFFER OF PROPOSER TO BE BOUND BY THE TERMS OF ITS PROPOSAL. FAILURE TO SIGN THIS SOLICITATION WHERE INDICATED BELOW BY AN AUTHORIZED REPRESENTATIVE SHALL RENDER THE PROPOSAL NON-RESPONSIVE. THE COUNTY MAY, HOWEVER, IN ITS SOLE DISCRETION, ACCEPT ANY PROPOSAL THAT INCLUDES AN EXECUTED DOCUMENT WHICH UNEQUIVOCALLY BINDS THE PROPOSER TO THE TERMS OF ITS OFFER.

Signed By: _____ Date: _____

Print Name: _____ Title: _____

Form A-2
AFFIDAVIT OF MIAMI-DADE COUNTY
LOBBYIST REGISTRATION FOR ORAL PRESENTATION

(1) Project Title: _____ Project No.: _____
 (2) Department: _____
 (3) Proposer's Name: _____
 Address: _____ Zip: _____
 Business Telephone: (____) _____

(4) List All Members of the Presentation Team Who Will Be Participating in the Oral Presentation:

NAME	TITLE	EMPLOYED BY	TEL. NO.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

(ATTACH ADDITIONAL SHEET IF NECESSARY)

The individuals named above are Registered and the Registration Fee is not required for the Oral Presentation ONLY.

Any person who appears as a representative for an individual or firm for an oral presentation before a County certification, evaluation, selection, technical review or similar committee must be listed on an affidavit provided by the County. The affidavit shall be filed with the Clerk of the Board at the time the response is submitted. The individual or firm must submit a revised affidavit for additional team members added after submittal of the proposal with the Clerk of the Board prior to the oral presentation. Any person not listed on the affidavit or revised affidavit may not participate in the oral presentation, unless he or she is registered with the Clerk's office and has paid all applicable fees.

Other than for the oral presentation, Proposers who wish to address the county commission, county board or county committee concerning any actions, decisions or recommendations of County personnel regarding this solicitation in accordance with Section 2-11.1(s) of the Code of Miami-Dade County MUST register with the Clerk of the Board and pay all applicable fees.

I do solemnly swear that all the foregoing facts are true and correct and I have read or am familiar with the provisions of Section 2-11.1(s) of the Code of Miami-Dade County as amended.

Signature of Authorized Representative: _____ Title: _____
 STATE OF _____
 COUNTY OF _____

The foregoing instrument was acknowledged before me this _____,
by _____, a _____, who is personally known
(Individual, Officer, Partner or Agent) (Sole Proprietor, Corporation or Partnership)
to me or who has produced _____ as identification and who did/did not take an oath.

(Signature of person taking acknowledgement)

(Name of Acknowledger typed, printed or stamped)

(Title or Rank)

(Serial Number, if any)

Revised 2/7/05

Form A-3
ACKNOWLEDGEMENT OF ADDENDA

Instructions: Complete Part I or Part II, whichever is applicable.

PART I: Listed below are the dates of issue for each Addendum received in connection with this solicitation.

Addendum #1, Dated _____, 201__

Addendum #2, Dated _____, 201__

Addendum #3, Dated _____, 201__

Addendum #4, Dated _____, 201__

Addendum #5, Dated _____, 201__

Addendum #6, Dated _____, 201__

Addendum #7, Dated _____, 201__

Addendum #8, Dated _____, 201__

Addendum #9, Dated _____, 201__

PART II:

____ No Addendum was received in connection with this solicitation.

Authorized Signature: _____ Date: _____

Print Name: _____ Title: _____

Firm Name: _____

A-3 - Rev. 1/25/10

Form A-5

FAIR SUBCONTRACTING POLICIES
(Section 2-8.8 of the Miami-Dade County Code)

FAIR SUBCONTRACTING PRACTICES

In compliance with Section 2-8.8 of the Miami-Dade County Code, the Proposer submits the following detailed statement of its policies and procedures for awarding subcontracts:

I hereby certify that the foregoing information is true, correct and complete.

Signature of Authorized Representative: _____

Title: _____ Date: _____

Firm Name: _____

Form A-6 Rev. 2/13/01

DRAFT

FORM A-6
SUBCONTRACTOR/SUPPLIER LISTING
(Miami-Dade County Code Sections 2-8.1, 2-8.8 and 10-34)

Name of Proposer _____ FEIN _____

In accordance with Sections 2-8.1, 2-8.8 and 10.34 of the Miami-Dade County Code, this form must be submitted as a condition of award by all Proposers on County contracts for purchase of supplies, materials or services, including professional services which involve expenditures of \$100,000 or more, and all Proposers on County or Public Health Trust construction contracts which involve expenditures of \$100,000 or more. The Proposers who is awarded this contract shall not change or substitute first tier subcontractors or direct suppliers or the portions of the contract work to be performed or materials to be supplied from those identified, except upon written approval of the County. The Proposers should enter the word "NONE" under the appropriate heading of this form if no subcontractors or suppliers will be used on the contract and sign the form below.

In accordance with Ordinance No. 11-90, an entity contracting with the County shall report the race, gender and ethnic origin of the owners and employees of all first tier subcontractors/suppliers. In the event that the recommended Proposer demonstrates to the County prior to award that the race, gender, and ethnic information is not reasonably available at that time, the Proposer shall be obligated to exercise diligent efforts to obtain that information and provide the same to the County not later than ten (10) days after it becomes available and, in any event, prior to final payment under the contract.

(Please duplicate this form if additional space is needed.)

Business Name and Address of First Tier Subcontractor/ Subconsultant	Principal Owner	Scope of Work to be Performed by Subcontractor/ Subconsultant	Principal Owner (Enter the number of male and female owners by race/ethnicity)								Employee(s) (Enter the number of male and female employees and the number of employees by race/ethnicity)							
			Gender		Race/Ethnicity						Gender		Race/Ethnicity					
			M	F	White	Black	Hispanic	Asian/Pacific Islander	Native American/ Native Alaskan	Other	M	F	White	Black	Hispanic	Asian/Pacific Islander	Native American/ Native Alaskan	Other
Business Name and Address of First Tier Direct Supplier	Principal Owner	Supplies/Materials/Services to be Provided by Supplier	Principal Owner (Enter the number of male and female owners by race/ethnicity)								Employee(s) (Enter the number of male and female employees and the number of employees by race/ethnicity)							
			Gender		Race/Ethnicity						Gender		Race/Ethnicity					
			M	F	White	Black	Hispanic	Asian/Pacific Islander	Native American/ Native Alaskan	Other	M	F	White	Black	Hispanic	Asian/Pacific Islander	Native American/ Native Alaskan	Other

☐ Mark here if race, gender and ethnicity information is not available and will be provided at a later date. This data may be submitted to contracting department or on-line to the Small Business Development of the Department of Regulatory and Economic Resources at <http://www.miamidade.gov/business/business-development-contracts.asp>. As a condition of final payment, Proposer shall provide subcontractor information on the Subcontractor Payment Report Sub 200 form which can be found at <http://www.miamidade.gov/business/library/forms/subcontractors-payment.pdf>.

I certify that the representations contained in this Subcontractor/Supplier listing are to the best of my knowledge true and accurate.

Signature of Proposer _____

Print Name _____

Print Title _____

Date _____

SUB 100 Rev.

**ATTACHMENT 4
PROPOSER INFORMATION**

Attachment 4
Proposer Information
STEP 1

Proposer's Experience, Qualifications, and Past Performance

1. Describe the Proposer's past performance and experience in CNG project and state the number of years that the Proposer has been in existence, the current number of employees, and the primary markets served.
2. Provide a detailed description of comparable contracts (similar in scope of work to those requested herein) which the Proposer has either ongoing or completed within the past three years. The description should identify for each project: (i) the client, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) client contact person and phone number, (vi) statement of whether Proposer was the prime contractor or subcontractor, and (vii) the results of the project. Where possible, list and describe those projects performed for government clients or similar size private entities (excluding any work performed for the County).
3. List all contracts which the Proposer has performed for Miami-Dade County. The County will review all contracts the Proposer has performed for the County in accordance with Section 2-8.1(g) of the Miami-Dade County Code, which requires that "a Bidder's or Proposer's past performance on County Contracts be considered in the selection of Consultants and Contractors for future County Contracts." As such the Proposer must list and describe all work performed for Miami-Dade County and include for each project: (i) name of the County Department which administers or administered the contract, (ii) description of work, (iii) total dollar value of the contract, (iv) dates covering the term of the contract, (v) County contact person and phone number, (vi) statement of whether Proposer was the prime contractor or subcontractor, and (vii) the results of the project.

Key Personnel and Subcontractors Performing Services

4. Provide an organization chart showing all key personnel, including their titles, to be assigned to this project. This chart must clearly identify the Proposer's employees and those of the subcontractors or subconsultants and shall include the functions to be performed by the key personnel. Key personnel include all partners, managers, seniors and other professional staff that will perform work and/or services in this project.
5. List the names and addresses of all first tier subcontractors, and describe the extent of work to be performed by each first tier subcontractor. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of the subcontractors who will be assigned to this project.
6. Describe the experience, qualifications and other vital information, including relevant experience on previous similar projects, of all key personnel, including those of subcontractors, who will be assigned to this project.
7. Provide other detailed qualification information including licensing, certifications etc on all key personnel who will be assigned to this project, including any key personnel of subcontractors.

Proposed Approach/Overall Plan

8. Provide a high-level description of proposer's offer and approach to successful implementation of its offer. Proposals shall include sufficient details to allow the County to perform a meaningful evaluation.

STEP 2

(The County reserves the right to amend the information requested below for Step 2. The County will issue addendum/clarification to all Proposers remaining in consideration for this Step (See Section 4.2 for ITN Process)).

Detailed Approach, Resources, Implementation, Financial Strength and Capacity

1. Proposers are encouraged to ask all necessary questions and obtain as much information as is available to assist them in presenting their proposal. The facilities are considered in "as is" condition. Site plans, building documents, and other technical information may not be available. Any such information that is available will be forwarded upon request via addenda to this solicitation. The proposal shall include the project plan including concepts and implementation for the Scope of Work as identified in Section 2.0 and for the items as listed below
 - A. Fuel / Service Stations: Design, build, operate, and maintain (DBOM) fuel / service stations on MDT property that will meet present and future bus fleet CNG fueling and servicing requirements. The plan shall address the following: Providing electrical equipment and electricity, HVAC, plumbing, fire protection etc for the station, building of station, permitting, environmental compliance, design/elevations, detailed equipment list with descriptions, etc.
 - B. Upgrade Maintenance Facilities: Inspect and upgrade as necessary the entire maintenance facility at each location including all existing buildings, structures, and equipment to determine any and all modifications required in order to meet all applicable codes and regulations. Implement all required modifications in accordance with best industry standards.
 - C. Bus Purchases/Leases: Describe financing and/or leasing options for the County for the replacement of diesel buses with equivalent CNG vehicles as needed, with amortization schedule(s).
 - D. Revenue Sharing for fueling for non-County vehicles. Describe the details, including marketing and any potential contractual relationships with any public/private entities.
2. Describe Proposer's Team and approach to project organization and management, including the responsibilities of Proposer's management and staff personnel that will perform work on this project.
3. Provide a project schedule (including phases) identifying specific key categories and duration (include all phased approaches).
4. Provide details of plans to access any incentives (i.e. grants, rebates, tax credits, etc.) available and how these will be utilized in the best interest of the County. Also, provide a plan of action to monitor and access any future incentive that may become available during the ensuing contract period and how these will be utilized so as to provide additional cost savings to the County.
5. Provide a detailed plan for maintenance of stations to include unscheduled maintenance and emergency response times for CNG infrastructure issues support.

6. Describe the proposed CNG fuel data collection system and its capabilities including ability to distinguish between Miami Dade County fueling and non-County fueling and billing requirements; it's ability to communicate fuel and vehicle data electronically with the existing County fuel system in order to provide comprehensive auditable fuel data in a text d-limited format per vehicle, hose, compressor, and gas company meter; and its ability to transfer fuel data daily in an automated fashion with file transfer protocol (FTP)
7. Provide a Continuation of Operations Plan that outlines emergency procedures to ensure continuity of CNG in the event of a crisis such as power failure, disruption of natural gas supply from source to site or any other events that result in the disruption of CNG.
8. Describe the best practices that will be employed to minimize loss of product and associated methane emissions from storage, distribution, and fueling practices. (EPA Natural Gas Star Program <http://www.epa.gov/gasstar/tools/recommended.html>).
9. Provide a detailed safety plan – include emergency procedures, Hazardous Operation (HAZOP) safety plan – include HAZOP recertification every four years, and a hurricane plan for what you are proposing
10. Sourcing of CNG: Identify if Proposer wishes to use County contract or will use other resources to source gas.
11. Describe in detail how the proposer will obtain the capacity required to support MDT's fleet of CNG buses via the Florida Gas Transmission line.
12. Describe the proposer's current and near future commitments/projects that may impact their financial resource, performance, capabilities to successfully complete the proposed work herein.
13. Provide documentation proving Proposer's financial strength and ability to provide start-up operations and reasonable working capital to handle this project according to its proposal. Such documentation may include its most recent certified financial statements as of a date not earlier than the end of the Proposer's preceding official tax accounting period, with a statement in writing, signed by a duly authorized representative, stating that the present financial condition is materially the same as that shown on the balance sheet and income statement submitted, or with an explanation for a material change in the financial situation. If certified financial statements are not available provide latest available financial statements (balance sheet and income statement) and letters of credit availability from accredited financial institutions, or other relevant documentation.
14. Provide proposer's plan/vision regarding ownership of fuel/service stations.
15. Identify if Proposer has taken any exception to the terms of this Solicitation. If so, indicate what alternative is being offered and the cost implications of the exception(s).

16. Pricing/Financing and Proposed Contract Term

Proposers are to specify contract term(s) (*length of the contract*) they propose to enter with the County and include a detailed justification/rationale/explanation.

These are the parameters pertaining to the pricing/financing strategy the County anticipates the proposers will consider in preparation of pricing information to the County.

The proposer should take in consideration the number of gallons of diesel fuel currently utilized by MDT and provide a plan to guarantee a minimum amount of diesel gallon equivalent CNG fuel availability on a daily basis to ensure that County and MDT operations are not disrupted as the ramp-up to a full CNG fleet is implemented.

The County reserves the right to purchase natural gas through existing or future county contracts not associated with this ITN. However, a proposer interested in providing natural gas should submit its pricing as **an adder on a per Therm** basis consisting of all charges necessary for the proposer to fully complete and invoice the business transaction, inclusive of delivery, profit, and any other fees/charges; exclusive of Florida Gas Transmission fuel and usage fees. The firm fixed service adder price excludes taxes and the Index Price of spot gas delivered to pipelines, as published by the Federal Energy Regulatory Commission (FERC).

Prices shall be based on the Platts, inside Federal Energy Regulatory Commission's (FERC) Gas Market Report, Florida Gas Transmission Company (FGT), Zone Two (2).

A Therm is described by the U.S. Energy Information Administration (EIA) as: Therm — One therm equals 100,000 Btu, or 0.10 MMBtu.

The following are adders the County is interested in the proposer's price breakdown.

- **Adder 1: \$ _____ per Therm for the cost to design, build, operate and maintain a full service fueling station including providing CNG to the County**
- **Adder 2: \$ _____ per Therm for the cost to design, build, operate and maintain a full service fueling station (County uses its contracts for purchase of gas)**
- **Adder 3: \$ _____ per Therm for the cost of maintenance facilities upgrades**
- **Adder 4: \$ _____ per Therm for the cost of bus purchase/lease.**

Proposers may submit alternative pricing/financing models like monthly amount to be paid by the County if payment is not tied to consumption of gas, initial lump sum payment by the County and thereafter a small monthly amount, monthly payment by the County after initial investment by the Proposer or any other option. For each pricing/financing model, a amortization schedule should be included.

For each pricing/financing model proposed, a detailed cost-benefit analysis to quantitatively demonstrate the total costs and savings to the County for the contract term(s) proposed.

ATTACHMENT 5
Form of Agreement

ATTACHMENT 5
Form of Agreement

(This is the form of agreement the County anticipates awarding to the selected Proposer)

Title
Contract No.

THIS AGREEMENT made and entered into as of this _____ day of _____ by and between _____, a corporation organized and existing under the laws of the State of _____, having its principal office at _____ (hereinafter referred to as the "Contractor"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County"),

WITNESSETH:

WHEREAS, the Contractor has offered to provide _____, on a non-exclusive basis, that shall conform to the Scope of Services (Attachment 1); Miami-Dade County's Invitation to Negotiate (ITN) No. _____ and all associated addenda and attachments, incorporated herein by reference; and the requirements of this Agreement; and,

WHEREAS, the Contractor has submitted a written proposal dated _____, hereinafter referred to as the "Contractor's Proposal" which is incorporated herein by reference; and,

WHEREAS, the County desires to procure from the Contractor such _____ for the County, in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Agreement" to mean collectively these terms and conditions, the Scope of Services (Attachment 1), all other appendices and attachments hereto, all amendments issued hereto, ITN No. _____ and all associated addenda, and the

Contractor's Proposal.

- b) The words "Contract Date" to mean the date on which this Agreement is effective.
- c) The words "Contract Manager" to mean Miami-Dade County's Director, Internal Services Department, or the duly authorized representative designated to manage the Contract.
- d) The word "Contractor" to mean _____ and its permitted successors and assigns.
- e) The word "Days" to mean Calendar Days.
- f) The word "Deliverables" to mean all documentation and any items of any nature submitted by the Contractor to the County's Project Manager for review and approval pursuant to the terms of this Agreement.
- g) The words "directed", "required", "permitted", "ordered", "designated", "selected", "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the County's Project Manager; and similarly the words "approved", "acceptable", "satisfactory", "equal", "necessary", or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the County's Project Manager.
- h) The words "Extra Work" or "Additional Work" to mean additions or deletions or modifications to the amount, type or value of the Work and Services as required in this Contract, as directed and/or approved by the County.
- i) The words "Project Manager" to mean the County Mayor or the duly authorized representative designated to manage the Project.
- k) The words "Scope of Services" to mean the document appended hereto as Appendix A, which details the work to be performed by the Contractor.
- l) The word "subcontractor" or "subconsultant" to mean any person, entity, firm or corporation, other than the employees of the Contractor, who furnishes labor and/or materials, in connection with the Work, whether directly or indirectly, on behalf and/or under the direction of the Contractor and whether or not in privity of Contract with the Contractor.
- m) The words "Work", "Services" or "Project" to mean all matters and things required to be done by the Contractor in accordance with the provisions of this Contract.

ARTICLE 2. ORDER OF PRECEDENCE

If there is a conflict between or among the provisions of this Agreement, the order of precedence is as follows: 1) these terms and conditions, 2) the Scope of Services (Attachment 1), 3) the Miami-Dade County's ITN No. _____ and any associated addenda and attachments thereof, and 4) the Contractor's Proposal.

ARTICLE 3. RULES OF INTERPRETATION

- a) References to a specified Article, section or schedule shall be construed as reference to that specified Article, or section of, or schedule to this Agreement unless otherwise

indicated.

- b) Reference to any agreement or other instrument shall be deemed to include such agreement or other instrument as such agreement or other instrument may, from time to time, be modified, amended, supplemented, or restated in accordance with its terms.
- c) The terms "hereof", "herein", "hereinafter", "hereby", "herewith", "hereto", and "hereunder" shall be deemed to refer to this Agreement.
- d) The titles, headings, captions and arrangements used in these Terms and Conditions are for convenience only and shall not be deemed to limit, amplify or modify the terms of this Contract, nor affect the meaning thereof.

ARTICLE 4. NATURE OF THE AGREEMENT

- a) This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- b) The Contractor shall provide the services set forth in the Scope of Services, and render full and prompt cooperation with the County in all aspects of the Services performed hereunder.
- c) The Contractor acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all Work and Services under this Contract. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by this Agreement, and the Contractor shall perform the same as though they were specifically mentioned, described and delineated.
- d) The Contractor shall furnish all labor, materials, tools, supplies, and other items required to perform the Work and Services that are necessary for the completion of this Contract. All Work and Services shall be accomplished at the direction of and to the satisfaction of the County's Project Manager.
- e) The Contractor acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Contractor agrees to provide input on policy issues in the form of recommendations. The Contractor agrees to implement any and all changes in providing Services hereunder as a result of a policy change implemented by the County. The Contractor agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

ARTICLE 5. CONTRACT TERM

The Contract shall become effective on _____ and shall continue through the last day of the ____ month. The County, at its sole discretion, reserves the right to exercise the option to renew this Contract for a period for ____ () additional years on a year-to-year basis. The County reserves the right to exercise its option to extend this Contract for up to one hundred-eighty (180) calendar days beyond the current Contract period and will notify the Contractor in writing of the extension. This Contract may be extended beyond the initial one hundred-eighty (180) calendar day extension period by mutual agreement between the County and the Contractor, upon approval by the Board of County Commissioners.

ARTICLE 6. NOTICE REQUIREMENTS

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if delivered by Registered or Certified Mail, with return receipt requested; or delivered personally; or delivered via fax or e-mail (if provided below) and followed with delivery of hard copy; and in any case addressed as follows:

(1) to the County

a) to the Project Manager:

Miami-Dade County
Attention:
Phone:

Fax:

E-mail:

and,

b) to the Contract Manager:

Miami-Dade County
Internal Services Department, Procurement Management Division
111 N.W. 1st Street, Suite 1375
Miami, FL 33128-1974

Attention: Assistant Director

Phone: (305) 375-5548

Fax: (305) 375-2316

E-mail:

(2) To the Contractor

Attention:
Phone:
Fax:
E-mail:

Either party may at any time designate a different address and/or contact person by giving

notice as provided above to the other party. Such notices shall be deemed given upon receipt by the addressee.

ARTICLE 7. PAYMENT FOR SERVICES/AMOUNT OBLIGATED

The Contractor warrants that it has reviewed the County's requirements and has asked such questions and conducted such other inquiries as the Contractor deemed necessary in order to determine the price the Contractor will charge to provide the Work and Services to be performed under this Contract. The compensation for all Work and Services performed under this Contract, including all costs associated with such Work and Services, shall be in the total amount of _____ (\$_____). The County shall have no obligation to pay the Contractor any additional sum in excess of this amount, except for a change and/or modification to the Contract, which is approved and executed in writing by the County and the Contractor.

All Services undertaken by the Contractor before County's approval of this Contract shall be at the Contractor's risk and expense.

ARTICLE 8. PRICING/FINANCING

To be determined

ARTICLE 9. METHOD AND TIMES OF PAYMENT

The Contractor agrees that under the provisions of this Agreement, as reimbursement for those actual, reasonable and necessary costs incurred by the Contractor, which are directly attributable or properly allocable to the Services, the Contractor may bill the County periodically, but not more than once per _____, upon invoices certified by the Contractor pursuant to Attachment ____– Price Schedule. All invoices shall be taken from the books of account kept by the Contractor, shall be supported by copies of payroll distribution, receipt bills or other documents reasonably required by the County, shall show the County's contract number, and shall have a unique invoice number assigned by the Contractor. It is the policy of Miami-Dade County that payment for all purchases by County agencies and the Public Health Trust shall be made in a timely manner and that interest payments be made on late payments. In accordance with Florida Statutes, Section 218.74 and Section 2-8.1.4 of the Miami-Dade County Code, the time at which payment shall be due from the County or the Public Health Trust shall be forty-five (45) days from receipt of a proper invoice. The time at which payment shall be due to small businesses shall be thirty (30) days from receipt of a proper invoice. All payments due from the County or the Public Health Trust, and not made within the time specified by this section shall bear interest from thirty (30) days after the due date at the rate of one percent (1%) per month on the unpaid balance. Further, proceedings to resolve disputes for payment of obligations shall be concluded by final written decision of the County Mayor, or his or her designee(s), not later than sixty (60) days after the date on which the proper invoice was received by the County or the Public Health Trust.

In accordance with Miami-Dade County Implementing Order 3-9, Accounts Receivable Adjustments, if money is owed by the Contractor to the County, whether under this Contract or for any other purpose, the County reserves the right to retain such amount from payment due by County to the Contractor under this Contract. Such retained amount shall be applied to the amount owed by the Contractor to the County. The Contractor shall have no further claim to

such retained amounts which shall be deemed full accord and satisfaction of the amount due by the County to the Contractor for the applicable payment due herein.

Invoices and associated back-up documentation shall be submitted in duplicate by the Contractor to the County as follows:

Miami-Dade County

Attention: _____

The County may at any time designate a different address and/or contact person by giving written notice to the other party.

ARTICLE 10. INDEMNIFICATION AND INSURANCE

The Contractor shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from the performance of this Agreement by the Contractor or its employees, agents, servants, partners principals or subcontractors. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

Upon County's notification, the Contractor shall furnish to the Internal Services Department, Procurement Management Division, Certificates of Insurance that indicate that insurance coverage has been obtained, which meets the requirements as outlined below:

1. Worker's Compensation Insurance for all employees of the Contractor as required by Florida Statute 440.
2. Public Liability Insurance on a comprehensive basis in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage. **Miami-Dade County must be shown as an additional insured with respect to this coverage. The mailing address of Miami-Dade County 111 N.W. 1st Street, Suite 1300, Miami, Florida 33128-1974, as the certificate holder, must appear on the certificate of insurance.**
3. Automobile Liability Insurance covering all owned, non-owned, and hired vehicles used in connection with the Services, in an amount not less than \$300,000 combined single limit per occurrence for bodily injury and property damage.
4. Professional Liability Insurance in an amount not less than \$_____ per claim.

Insurance requirements are subject to change based on the scope of services resulting

from the negotiated contract.

The company must be rated no less than "A-" as to management, and no less than "Class VII" as to financial strength by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

OR

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Financial Services and are members of the Florida Guaranty Fund.

Compliance with the foregoing requirements shall not relieve the Contractor of this liability and obligation under this section or under any other section in this Agreement.

Award of this Contract is contingent upon the receipt of the insurance documents, as required, within ten (10) business days. If the insurance certificate is received within the specified timeframe but not in the manner prescribed in this Agreement, the Contractor shall have an additional five (5) business days to submit a corrected certificate to the County. If the Contractor fails to submit the required insurance documents in the manner prescribed in this Agreement within fifteen (15) business days, the Contractor shall be in default of the contractual terms and conditions and award of the Contract may be rescinded, unless such timeframe for submission has been extended by the County.

The Contractor shall be responsible for ensuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period of the Contract, including any and all option years or extension periods that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Contractor shall be responsible for submitting new or renewed insurance certificates to the County at a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the contractual period, the County shall suspend the Contract until such time as the new or renewed certificates are received by the County in the manner prescribed herein; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this contract.

ARTICLE 11. MANNER OF PERFORMANCE

- a) The Contractor shall provide the Services described herein in a competent and professional manner satisfactory to the County in accordance with the terms and conditions of this Agreement. The County shall be entitled to a satisfactory performance of all Services described herein and to full and prompt cooperation by the Contractor in all aspects of the Services. At the request of the County, the Contractor shall promptly remove from the project any Contractor's employee, subcontractor, or any other person performing Services hereunder. The Contractor agrees that such removal of any of its employees does not require the termination or demotion of any employee by the Contractor.
- b) The Contractor agrees to defend, hold harmless and indemnify the County and shall be liable and responsible for any and all claims, suits, actions, damages and costs (including attorney's fees and court costs) made against the County, occurring on account of, arising from or in connection with the removal and replacement of any Contractor's personnel performing services hereunder at the behest of the County. Removal and replacement of any Contractor's personnel as used in this Article shall not

require the termination and or demotion of such Contractor's personnel.

- c) The Contractor agrees that at all times it will employ, maintain and assign to the performance of the Services a sufficient number of competent and qualified professionals and other personnel to meet the requirements to which reference is hereinafter made. The Contractor agrees to adjust its personnel staffing levels or to replace any its personnel if so directed upon reasonable request from the County, should the County make a determination, in its sole discretion, that said personnel staffing is inappropriate or that any individual is not performing in a manner consistent with the requirements for such a position.
- d) The Contractor warrants and represents that its personnel have the proper skill, training, background, knowledge, experience, rights, authorizations, integrity, character and licenses as necessary to perform the Services described herein, in a competent and professional manner.
- e) The Contractor shall at all times cooperate with the County and coordinate its respective work efforts to most effectively and efficiently maintain the progress in performing the Services.
- f) The Contractor shall comply with all provisions of all federal, state and local laws, statutes, ordinances, and regulations that are applicable to the performance of this Agreement.

ARTICLE 12. EMPLOYEES OF THE CONTRACTOR

All employees of the Contractor shall be considered to be, at all times, employees of the Contractor under its sole direction and not employees or agents of the County. The Contractor shall supply competent employees. Miami-Dade County may require the Contractor to remove an employee it deems careless, incompetent, insubordinate or otherwise objectionable and whose continued employment on County property is not in the best interest of the County. Each employee shall have and wear proper identification.

ARTICLE 13. INDEPENDENT CONTRACTOR RELATIONSHIP

The Contractor is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Contractor's sole direction, supervision and control. The Contractor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Contractor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees and agents of the County.

The Contractor does not have the power or authority to bind the County in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 14. AUTHORITY OF THE COUNTY'S PROJECT MANAGER

- a) The Contractor hereby acknowledges that the County's Project Manager will determine in the first instance all questions of any nature whatsoever arising out of, under, or in connection with, or in any way related to or on account of, this Agreement including without limitations: questions as to the value, acceptability and fitness of the Services;

questions as to either party's fulfillment of its obligations under the Contract; negligence, fraud or misrepresentation before or subsequent to acceptance of the Contractor's Proposal; questions as to the interpretation of the Scope of Services; and claims for damages, compensation and losses.

- b) The Contractor shall be bound by all determinations or orders and shall promptly comply with every order of the Project Manager, including the withdrawal or modification of any previous order and regardless of whether the Contractor agrees with the Project Manager's determination or order. Where orders are given orally, they will be issued in writing by the Project Manager as soon thereafter as is practicable.
- c) The Contractor must, in the final instance, seek to resolve every difference concerning the Agreement with the Project Manager. In the event that the Contractor and the Project Manager are unable to resolve their difference, the Contractor may initiate a dispute in accordance with the procedures set forth in this Article. Exhaustion of these procedures shall be a condition precedent to any lawsuit permitted hereunder.
- d) In the event of such dispute, the parties to this Agreement authorize the County Mayor or designee, who may not be the Project Manager or anyone associated with this Project, acting personally, to decide all questions arising out of, under, or in connection with, or in any way related to or on account of the Agreement (including but not limited to claims in the nature of breach of contract, fraud or misrepresentation arising either before or subsequent to execution hereof) and the decision of each with respect to matters within the County Mayor's purview as set forth above shall be conclusive, final and binding on parties. Any such dispute shall be brought, if at all, before the County Mayor within 10 days of the occurrence, event or act out of which the dispute arises.
- e) The County Mayor may base this decision on such assistance as may be desirable, including advice of experts, but in any event shall base the decision on an independent and objective determination of whether Contractor's performance or any Deliverable meets the requirements of this Agreement and any specifications with respect thereto set forth herein. The effect of any decision shall not be impaired or waived by any negotiations or settlements or offers made in connection with the dispute, whether or not the County Mayor participated therein, or by any prior decision of others, which prior decision shall be deemed subject to review, or by any termination or cancellation of the Agreement. All such disputes shall be submitted in writing by the Contractor to the County Mayor for a decision, together with all evidence and other pertinent information in regard to such questions, in order that a fair and impartial decision may be made. Whenever the County Mayor is entitled to exercise discretion or judgement or to make a determination or form an opinion pursuant to the provisions of this Article, such action shall be fair and impartial when exercised or taken. The County Mayor, as appropriate, shall render a decision in writing and deliver a copy of the same to the Contractor. Except as such remedies may be limited or waived elsewhere in the Agreement, Contractor reserves the right to pursue any remedies available under law after exhausting the provisions of this Article.

ARTICLE 15. MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.

- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on the Contractor, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Contractor fails to diligently defend such claims, and thereafter seek indemnity for costs from the Contractor.

ARTICLE 16. QUALITY ASSURANCE/QUALITY ASSURANCE RECORD KEEPING

The Contractor shall maintain, and shall require that its subcontractors and suppliers maintain, complete and accurate records to substantiate compliance with the requirements set forth in the Scope of Services. The Contractor and its subcontractors and suppliers, shall retain such records, and all other documents relevant to the Services furnished under this Agreement for a period of three (3) years from the expiration date of this Agreement and any extension thereof.

ARTICLE 17. AUDITS

The County, or its duly authorized representatives or governmental agencies, shall until the expiration of three (3) years after the expiration of this Agreement and any extension thereof, have access to and the right to examine and reproduce any of the Contractor's books, documents, papers and records and of its subcontractors and suppliers which apply to all matters of the County. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, as applicable, and shall only address those transactions related to this Agreement.

Pursuant to Section 2-481 of the Miami-Dade County Code, the Contractor will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Contractor agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

ARTICLE 18. SUBSTITUTION OF PERSONNEL

In the event the Contractor wishes to substitute personnel for the key personnel identified by the Contractor's Proposal, the Contractor must notify the County in writing and request written approval for the substitution at least ten (10) business days prior to effecting such substitution.

ARTICLE 19. CONSENT OF THE COUNTY REQUIRED FOR ASSIGNMENT

The Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement, including its rights, title or interest in or to the same or any part thereof without the prior written consent of the County.

ARTICLE 20. SUBCONTRACTUAL RELATIONS

- a) If the Contractor will cause any part of this Agreement to be performed by a Subcontractor, the provisions of this Contract will apply to such Subcontractor and its

officers, agents and employees in all respects as if it and they were employees of the Contractor; and the Contractor will not be in any manner thereby discharged from its obligations and liabilities hereunder, but will be liable hereunder for all acts and negligence of the Subcontractor, its officers, agents, and employees, as if they were employees of the Contractor. The services performed by the Subcontractor will be subject to the provisions hereof as if performed directly by the Contractor.

- b) The Contractor, before making any subcontract for any portion of the services, will state in writing to the County the name of the proposed Subcontractor, the portion of the Services which the Subcontractor is to do, the place of business of such Subcontractor, and such other information as the County may require. The County will have the right to require the Contractor not to award any subcontract to a person, firm or corporation disapproved by the County.
- c) Before entering into any subcontract hereunder, the Contractor will inform the Subcontractor fully and completely of all provisions and requirements of this Agreement relating either directly or indirectly to the Services to be performed. Such Services performed by such Subcontractor will strictly comply with the requirements of this Contract.
- d) In order to qualify as a Subcontractor satisfactory to the County, in addition to the other requirements herein provided, the Subcontractor must be prepared to prove to the satisfaction of the County that it has the necessary facilities, skill and experience, and ample financial resources to perform the Services in a satisfactory manner. To be considered skilled and experienced, the Subcontractor must show to the satisfaction of the County that it has satisfactorily performed services of the same general type which is required to be performed under this Agreement.
- e) The County shall have the right to withdraw its consent to a subcontract if it appears to the County that the subcontract will delay, prevent, or otherwise impair the performance of the Contractor's obligations under this Agreement. All Subcontractors are required to protect the confidentiality of the County's and County's proprietary and confidential information. Contractor shall furnish to the County copies of all subcontracts between Contractor and Subcontractors and suppliers hereunder. Within each such subcontract, there shall be a clause for the benefit of the County in the event the County finds the Contractor in breach of this Contract, permitting the County to request completion by the Subcontractor of its performance obligations under the subcontract. The clause shall include an option for the County to pay the Subcontractor directly for the performance by such Subcontractor. Notwithstanding, the foregoing shall neither convey nor imply any obligation or liability on the part of the County to any subcontractor hereunder as more fully described herein.

ARTICLE 21. ASSUMPTION, PARAMETERS, PROJECTIONS, ESTIMATES AND EXPLANATIONS

The Contractor understands and agrees that any assumptions, parameters, projections, estimates and explanations presented by the County were provided to the Contractor for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Contractor. The Contractor accepts all risk associated with using this information.

ARTICLE 22. SEVERABILITY

If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

ARTICLE 23. TERMINATION AND SUSPENSION OF WORK

- a) The County may terminate this Agreement if an individual or corporation or other entity attempts to meet its contractual obligation with the County through fraud, misrepresentation or material misstatement.
- b) The County may, as a further sanction, terminate or cancel any other contract(s) that such individual or corporation or other entity has with the County and that such individual, corporation or other entity shall be responsible for all direct and indirect costs associated with such termination or cancellation, including attorney's fees.
- c) The foregoing notwithstanding, any individual, corporation or other entity which attempts to meet its contractual obligations with the County through fraud, misrepresentation or material misstatement may be debarred from County contracting for up to five (5) years in accordance with the County debarment procedures. The Contractor may be subject to debarment for failure to perform and all other reasons set forth in Section 10-38 of the County Code.
- d) In addition to cancellation or termination as otherwise provided in this Agreement, the County may at any time, in its sole discretion, with or without cause, terminate this Agreement by written notice to the Contractor.
- e) In the event that the County exercises its right to terminate this Agreement, the Contractor shall, upon receipt of such notice, unless otherwise directed by the County:
 - i. stop work on the date specified in the notice ("the Effective Termination Date");
 - ii. take such action as may be necessary for the protection and preservation of the County's materials and property;
 - iii. cancel orders;
 - iv. assign to the County and deliver to any location designated by the County any non-cancelable orders for Deliverables that are not capable of use except in the performance of this Agreement and has been specifically developed for the sole purpose of this Agreement and not incorporated in the Services;
 - v. take no action which will increase the amounts payable by the County under this Agreement; and
- f) In the event that the County exercises its right to terminate this Agreement, the Contractor will be compensated as stated in the payment Articles herein for the:
 - i. portion of the Services completed in accordance with the Agreement up to the Effective Termination Date; and
 - ii. non-cancelable Deliverables that are not capable of use except in the performance of this

Agreement and has been specifically developed for the sole purpose of this Agreement, but not incorporated in the Services.

- g) All compensation pursuant to this Article are subject to audit.

ARTICLE 24. EVENT OF DEFAULT

- a) An Event of Default shall mean a breach of this Agreement by the Contractor. Without limiting the generality of the foregoing, and in addition to those instances referred to herein as a breach, an Event of Default shall include the following:
- i. the Contractor has not delivered Deliverables on a timely basis;
 - ii. the Contractor has refused or failed to supply enough properly skilled staff personnel;
 - iii. the Contractor has failed to make prompt payment to subcontractors or suppliers for any Services;
 - iv. the Contractor has become insolvent (other than as interdicted by the bankruptcy laws), or has assigned the proceeds received for the benefit of the Contractor's creditors, or the Contractor has taken advantage of any insolvency statute or debtor/creditor law or if the Contractor's affairs have been put in the hands of a receiver;
 - v. the Contractor has failed to obtain the approval of the County where required by this Agreement;
 - vi. the Contractor has failed to provide "adequate assurances" as required under subsection b below;
 - vii. the Contractor has failed in the representation of any warranties stated herein.
- b) When, in the opinion of the County, reasonable grounds for uncertainty exist with respect to the Contractor's ability to perform the Services or any portion thereof, the County may request that the Contractor, within the timeframe set forth in the County's request, provide adequate assurances to the County, in writing, of the Contractor's ability to perform in accordance with the terms of this Agreement. Until the County receives such assurances, the County may request an adjustment to the compensation received by the Contractor for portions of the Services which the Contractor has not performed. In the event that the Contractor fails to provide to the County the requested assurances within the prescribed timeframe, the County may:
- i. treat such failure as a repudiation of this Agreement; and
 - ii. resort to any remedy for breach provided herein or at law, including but not limited to, taking over the performance of the Services or any part thereof either by itself or through others.
- c) In the event the County shall terminate this Agreement for default, the County or its designated representatives may immediately take possession of all applicable equipment, materials, products, documentation, reports and data.

ARTICLE 25. NOTICE OF DEFAULT - OPPORTUNITY TO CURE

If an Event of Default occurs in the determination of the County, the County may so notify the Contractor ("Default Notice"), specifying the basis for such default, and advising the Contractor that such default must be cured immediately or this Agreement with the County may be terminated. Notwithstanding, the County may, in its sole discretion, allow the Contractor to rectify the default to the County's reasonable satisfaction within a thirty (30) day period. The County may grant an additional period of such duration as the County shall deem appropriate without waiver of any of the County's rights hereunder, so long as the Contractor has commenced curing such default and is effectuating a cure with diligence and continuity during such thirty (30) day period or any other period which the County prescribes. The default notice shall specify the date the Contractor shall discontinue the Services upon the Termination Date.

ARTICLE 26. REMEDIES IN THE EVENT OF DEFAULT

If an Event of Default occurs, the Contractor shall be liable for all damages resulting from the default, including but not limited to:

- a) lost revenues;
- b) the difference between the cost associated with procuring Services hereunder and the amount actually expended by the County for re-procurement of Services, including procurement and administrative costs; and
- c) such other direct damages.

The Contractor shall also remain liable for any liabilities and claims related to the Contractor's default. The County may also bring any suit or proceeding for specific performance or for an injunction.

ARTICLE 27. PATENT AND COPYRIGHT INDEMNIFICATION

- a) The Contractor shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights in the performance of the Work.
- b) The Contractor warrants that all Deliverables furnished hereunder, including but not limited to: equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) The Contractor shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of performance or completion of, or in any way connected with, the Work, or the County's continued use of the Deliverables furnished hereunder. Accordingly, the Contractor at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any claim, demand, cause of action, debt, or liability.
- d) In the event any Deliverable or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the

Contractor shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Contractor's expense, the rights provided under this Agreement to use the item(s).

- e) The Contractor shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Deliverable hereunder. The Contractor shall enter into agreements with all suppliers and subcontractors at the Contractor's own risk. The County may reject any Deliverable that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

ARTICLE 28. CONFIDENTIALITY

- a) All Developed Works and other materials, data, transactions of all forms, financial information, documentation, inventions, designs and methods obtained from the County in connection with the Services performed under this Agreement, made or developed by the Contractor or its subcontractors in the course of the performance of such Services, or the results of such Services, or which the County holds the proprietary rights, constitute Confidential Information and may not, without the prior written consent of the County, be used by the Contractor or its employees, agents, subcontractors or suppliers for any purpose other than for the benefit of the County, unless required by law. In addition to the foregoing, all County employee information and County financial information shall be considered Confidential Information and shall be subject to all the requirements stated herein. Neither the Contractor nor its employees, agents, subcontractors or suppliers may sell, transfer, publish, disclose, display, license or otherwise make available to others any part of such Confidential Information without the prior written consent of the County. Additionally, the Contractor expressly agrees to be bound by and to defend, indemnify and hold harmless the County, and their officers and employees from the breach of any federal, state or local law in regard to the privacy of individuals.
- b) The Contractor shall advise each of its employees, agents, subcontractors and suppliers who may be exposed to such Confidential Information of their obligation to keep such information confidential and shall promptly advise the County in writing if it learns of any unauthorized use or disclosure of the Confidential Information by any of its employees or agents, or subcontractor's or supplier's employees, present or former. In addition, the Contractor agrees to cooperate fully and provide any assistance necessary to ensure the confidentiality of the Confidential Information.
- c) It is understood and agreed that in the event of a breach of this Article damages may not be an adequate remedy and the County shall be entitled to injunctive relief to restrain any such breach or threatened breach. Unless otherwise requested by the County, upon the completion of the Services performed hereunder, the Contractor shall immediately turn over to the County all such Confidential Information existing in tangible form, and no copies thereof shall be retained by the Contractor or its employees, agents, subcontractors or suppliers without the prior written consent of the County. A certificate evidencing compliance with this provision and signed by an officer of the Contractor shall accompany such materials.

ARTICLE 29. PROPRIETARY INFORMATION

As a political subdivision of the State of Florida, Miami-Dade County is subject to the stipulations of Florida's Public Records Law.

The Contractor acknowledges that all computer software in the County's possession may constitute or contain information or materials which the County has agreed to protect as proprietary information from disclosure or unauthorized use and may also constitute or contain information or materials which the County has developed at its own expense, the disclosure of which could harm the County's proprietary interest therein.

During the term of the contract, the Contractor will not use directly or indirectly for itself or for others, or publish or disclose to any third party, or remove from the County's property, any computer programs, data compilations, or other software which the County has developed, has used or is using, is holding for use, or which are otherwise in the possession of the County (hereinafter "Computer Software"). All third-party license agreements must also be honored by the contractors and their employees, except as authorized by the County and, if the Computer Software has been leased or purchased by the County, all hired party license agreements must also be honored by the contractors' employees with the approval of the lessor or Contractors thereof. This includes mainframe, minis, telecommunications, personal computers and any and all information technology software.

The Contractor will report to the County any information discovered or which is disclosed to the Contractor which may relate to the improper use, publication, disclosure or removal from the County's property of any information technology software and hardware and will take such steps as are within the Contractor's authority to prevent improper use, disclosure or removal.

ARTICLE 30. PROPRIETARY RIGHTS

- a) The Contractor hereby acknowledges and agrees that the County retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by the County to the Contractor hereunder or furnished by the Contractor to the County and/or created by the Contractor for delivery to the County, even if unfinished or in process, as a result of the Services the Contractor performs in connection with this Agreement, including all copyright and other proprietary rights therein, which the Contractor as well as its employees, agents, subcontractors and suppliers may use only in connection with the performance of Services under this Agreement. The Contractor shall not, without the prior written consent of the County, use such documentation on any other project in which the Contractor or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by the Contractor to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of the County's copyrights or other proprietary rights.
- b) All rights, title and interest in and to certain inventions, ideas, designs and methods, specifications and other documentation related thereto developed by the Contractor and its subcontractors specifically for the County, hereinafter referred to as "Developed Works" shall become the property of the County.
- c) Accordingly, neither the Contractor nor its employees, agents, subcontractors or suppliers shall have any proprietary interest in such Developed Works. The Developed Works may not be utilized, reproduced or distributed by or on behalf of the

Contractor, or any employee, agent, subcontractor or supplier thereof, without the prior written consent of the County, except as required for the Contractor's performance hereunder.

- d) Except as otherwise provided in subsections a, b, and c above, or elsewhere herein, the Contractor and its subcontractors and suppliers hereunder shall retain all proprietary rights in and to all Licensed Software provided hereunder, that have not been customized to satisfy the performance criteria set forth in the Scope of Services. Notwithstanding the foregoing, the Contractor hereby grants, and shall require that its subcontractors and suppliers grant, if the County so desires, a perpetual, irrevocable and unrestricted right and license to use, duplicate, disclose and/or permit any other person(s) or entity(ies) to use all such Licensed Software and the associated specifications, technical data and other Documentation for the operations of the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. Such license specifically includes, but is not limited to, the right of the County to use and/or disclose, in whole or in part, the technical documentation and Licensed Software, including source code provided hereunder, to any person or entity outside the County for such person's or entity's use in furnishing any and/or all of the Deliverables provided hereunder exclusively for the County or entities controlling, controlled by, under common control with, or affiliated with the County, or organizations which may hereafter be formed by or become affiliated with the County. No such License Software, specifications, data, documentation or related information shall be deemed to have been given in confidence and any statement or legend to the contrary shall be void and of no effect.

ARTICLE 31. VENDOR REGISTRATION/CONFLICT OF INTEREST

a) Vendor Registration

The Contractor shall be a registered vendor with the County – Internal Services Department, Procurement Management Division, for the duration of this Agreement. In becoming a Registered Vendor with Miami-Dade County, the Contractor confirms its knowledge of and commitment to comply with the following:

- | | |
|---|--|
| 1. Miami-Dade County Ownership Disclosure Affidavit
(Section 2-8.1 of the County Code) | (Article V of Chapter 11 of the County Code) |
| 2. Miami-Dade County Employment Disclosure Affidavit
(Section 2-8-1(d)(2) of the County Code) | 9. Miami-Dade County Living Wage Affidavit
(Section 2-8.9 of the County Code) |
| 3. Miami-Dade County Employment Drug-free Workplace Certification
(Section 2-8.1.2(b) of the County Code) | 10. Miami-Dade County Domestic Leave and Reporting Affidavit
(Article 8, Section 11A-60 11A-67 of the County Code) |
| 4. Miami-Dade Disability and Nondiscrimination Affidavit
(Section 2-8.1.5 of the County Code) | 11. Subcontracting Practices
(Ordinance 97-35) |
| 5. Miami-Dade County Debarment Disclosure Affidavit
(Section 10.38 of the County Code) | 12. Subcontractor /Supplier Listing
(Section 2-8.8 of the County Code) |
| 6. Miami-Dade County Vendor Obligation to County Affidavit
(Section 2-8.1 of the County Code) | 13. Environmentally Acceptable Packaging
(Resolution R-738-92) |
| 7. Miami-Dade County Code of Business Ethics Affidavit
(Section 2-8.1(i) and 2-11(b)(1) of the County Code through (6) and (9) of the County Code and Section 2-11.1(c) of the County Code) | 14. W-9 and 8109 Forms
(as required by the Internal Revenue Service) |
| 8. Miami-Dade County Family Leave Affidavit | 15. FEIN Number or Social Security Number
In order to establish a file, the Contractor's Federal Employer Identification Number (FEIN) must be provided. If no FEIN exists, the Social Security Number of the owner or individual must be provided. This |

number becomes Contractor's "County Vendor Number". To comply with Section 119.071(5) of the Florida Statutes relating to the collection of an individual's Social Security Number, be aware that the County requests the Social Security Number for the following purposes:

- Identification of individual account records
- To make payments to individual/Contractor for goods and services provided to Miami-Dade County
- Tax reporting purposes
- To provide a unique identifier in the vendor database that may be used for searching and sorting departmental records

16. Office of the Inspector General
(Section 2-1076 of the County Code)

17. Small Business Enterprises

The County endeavors to obtain the participation of all small business enterprises pursuant to Sections 2-8.2, 2-8.2.3 and 2-8.2.4 of the County Code and Title 49 of the Code of Federal Regulations.

18. Antitrust Laws

By acceptance of any contract, the Contractor agrees to comply with all antitrust laws of the United States and the State of Florida.

b) Conflict of Interest

Section 2-11.1(d) of Miami-Dade County Code requires that any County employee or any member of the employee's immediate family who has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County, competing or applying for a contract, must first request a conflict of interest opinion from the County's Ethics Commission prior to their or their immediate family member's entering into any contract or transacting any business through a firm, corporation, partnership or business entity in which the employee or any member of the employee's immediate family has a controlling financial interest, direct or indirect, with Miami-Dade County or any person or agency acting for Miami-Dade County. Any such contract or business engagement entered in violation of this subsection, as amended, shall be rendered voidable. For additional information, please contact the Ethics Commission hotline at (305) 579-2593.

ARTICLE 32. INSPECTOR GENERAL REVIEWS

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Contractor shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Contractor's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Contractor, its officers, agents, employees, subcontractors and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities and performance of the Contractor in connection with this Agreement. The terms of this Article shall not impose any liability on the County by the Contractor or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts, except as otherwise provided below. The cost of the audit for this Contract shall be one quarter (1/4) of one (1) percent of the total contract amount which cost shall be included in the total contract amount. The audit cost will be deducted by the County from progress payments to the Contractor. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and lease agreements; (f) concessions and other rental

agreements; (g) insurance contracts; (h) revenue-generating contracts; (l) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-38; (m) **federal, state and local government-funded grants**; and (n) interlocal agreements.

Federal Transit Administration Funds may be used by the County to pay for services under this Contract, hence this fee will not be deducted by the County. However the County reserves the right to conduct reviews at any time.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past, present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General is empowered to retain the services of independent private sector inspectors general (IPSIG) to audit, investigate, monitor, oversee, inspect and review operations, activities, performance and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Contractor, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Contractor from the Inspector General or IPSIG retained by the Inspector General, the Contractor shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Contractor's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

ARTICLE 33. LOCAL, STATE, AND FEDERAL COMPLIANCE REQUIREMENTS

Contractor agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including, but not limited to:

- a) Equal Employment Opportunity (EEO), in compliance with Executive Order 11246 as amended and applicable to this Contract.
- b) Miami-Dade County Florida, Department of Small Business Development Participation Provisions, as applicable to this Contract.
- c) Environmental Protection Agency (EPA), as applicable to this Contract.
- d) Miami-Dade County Code, Chapter 11A, Article 3. All contractors and subcontractors performing work

in connection with this Contract shall provide equal opportunity for employment without regard to race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, or veteran status. The aforesaid provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in a conspicuous place available for employees and applicants for employment, such notices as may be required by the Dade County Fair Housing and Employment Commission, or other authority having jurisdiction over the work setting forth the provisions of the nondiscrimination law.

- e) "Conflicts of Interest" Section 2-11 of the County Code, and Ordinance 01-199.
- f) Miami-Dade County Code Section 10-38 "Debarment".
- g) Miami-Dade County Ordinance 99-5, codified at 11A-60 et. seq. of Miami-Dade Code pertaining to complying with the County's Domestic Leave Ordinance.
- h) Miami-Dade County Ordinance 99-152, prohibiting the presentation, maintenance, or prosecution of false or fraudulent claims against Miami-Dade County.

The Contractor shall hold all licenses and/or certifications, obtain and pay for all permits and/or inspections, and comply with all laws, ordinances, regulations and building code requirements applicable to the work required herein. Damages, penalties, and/or fines imposed on the County or Contractor for failure to obtain and maintain required licenses, certifications, permits and/or inspections shall be borne by the Contractor. The Project Manager shall verify the certification(s), license(s), permit(s), etc. for the Contractor prior to authorizing work and as needed.

Notwithstanding any other provision of this Agreement, Contractor shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Contractor, constitute a violation of any law or regulation to which Contractor is subject, including but not limited to laws and regulations requiring that Contractor conduct its operations in a safe and sound manner.

ARTICLE 34. NONDISCRIMINATION

During the performance of this Contract, Contractor agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, or veteran status, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. Such action shall be taken with reference to, but not limited to: recruitment, employment, termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on the job training.

By entering into this Contract, the Contractor attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Contractor or any owner, subsidiary or other firm affiliated with or related to the Contractor is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Contract void. This Contract shall be void if the Contractor submits a false affidavit pursuant to this Resolution or the Contractor violates the Act or the Resolution during the term of this Contract, even if the Contractor was not in violation at the time it submitted its affidavit.

ARTICLE 35. CONFLICT OF INTEREST

The Contractor represents that:

- a) No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received or been promised any form of benefit, payment or compensation, whether tangible or intangible, in connection with the award of this Agreement.
- b) There are no undisclosed persons or entities interested with the Contractor in this Agreement. This Agreement is entered into by the Contractor without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. No elected or appointed officer or official, director, employee, agent or other consultant of the County, or of the State of Florida (including elected and appointed members of the legislative and executive branches of government), or a member of the immediate family or household of any of the aforesaid:
 - i) is interested on behalf of or through the Contractor directly or indirectly in any manner whatsoever in the execution or the performance of this Agreement, or in the services, supplies or work, to which this Agreement relates or in any portion of the revenues; or
 - ii) is an employee, agent, advisor, or consultant to the Contractor or to the best of the Contractor's knowledge any subcontractor or supplier to the Contractor.
- c) Neither the Contractor nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Contractor shall have an interest which is in conflict with the Contractor's faithful performance of its obligation under this Agreement; provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Contractor provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d) The provisions of this Article are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e) In the event Contractor has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Contractor shall promptly bring such information to the attention of the County's Project Manager. Contractor shall thereafter cooperate with the County's review and investigation of such information, and comply with the instructions Contractor receives from the Project Manager in regard to remedying the situation.

ARTICLE 36. PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall the Contractor without the express written consent of the County:

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the Work being performed hereunder, unless the Contractor first obtains the written approval of the County. Such approval may be withheld if for any reason the County believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of the County; and

- c) Except as may be required by law, the Contractor and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Contractor or such parties has been approved or endorsed by the County.

ARTICLE 37. BANKRUPTCY

The County reserves the right to terminate this contract, if, during the term of any contract the Contractor has with the County, the Contractor becomes involved as a debtor in a bankruptcy proceeding, or becomes involved in a reorganization, dissolution, or liquidation proceeding, or if a trustee or receiver is appointed over all or a substantial portion of the property of the Contractor under federal bankruptcy law or any state insolvency law.

ARTICLE 38. GOVERNING LAW

This Contract, including appendices, and all matters relating to this Contract (whether in contract, statute, tort (such as negligence), or otherwise) shall be governed by, and construed in accordance with, the laws of the State of Florida. Venue shall be Miami-Dade County.

ARTICLE 39. COUNTY USER ACCESS PROGRAM (UAP)

Intentionally Omitted

ARTICLE 40. FIRST SOURCE HIRING REFERRAL PROGRAM

Pursuant to Section 2-2113 of the Code of Miami-Dade County, for all contracts for goods and services, the Contractor, prior to hiring to fill each vacancy arising under a County contract shall (1) first notify the South Florida Workforce Investment Board ("SFWIB"), the designated Referral Agency, of the vacancy and list the vacancy with SFWIB according to the Code, and (2) make good faith efforts as determined by the County to fill a minimum of fifty percent (50%) of its employment needs under the County contract through the SFWIB. If no suitable candidates can be employed after a Referral Period of three to five days, the Contractor is free to fill its vacancies from other sources. Contractor will be required to provide quarterly reports to the SFWIB indicating the name and number of employees hired in the previous quarter, or why referred candidates were rejected. Sanctions for non-compliance shall include, but not be limited to: (i) suspension of contract until Contractor performs obligations, if appropriate; (ii) default and/or termination; and (iii) payment of \$1,500/employee, or the value of the wages that would have been earned given the noncompliance, whichever is less. Registration procedures and additional information regarding the FSHRP are available at <https://iapps.southfloridaworkforce.com/firstsource/>.

ARTICLE 41. PUBLIC RECORDS AND CONTRACTS FOR SERVICES PERFORMED ON BEHALF OF A PUBLIC AGENCY

The Contractor shall comply with the state of FL Public Records Law, s. 119.0701, F.S., specifically to: (1) keep and maintain public records that ordinarily and necessarily would be required by the public agency in order to perform the service; (2) provide the public with access to public records on the same terms and conditions that the public agency would provide the records and at a cost that does not exceed the cost provided in Chapter 119, F.S., or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized

by law; and (4) meet all requirements for retaining public records and transfer, at no cost, to the public agency all public records in possession of the Contractor upon termination of the contract and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the public agency in a format that is compatible with the information technology systems of the public agency. If the Contractor does not comply with a public records request, the public agency shall enforce contract provisions in accordance with the contract.

ARTICLE 42. SURVIVAL

The parties acknowledge that any of the obligations in this Agreement will survive the term, termination and cancellation hereof. Accordingly, the respective obligations of the Contractor and the County under this Agreement, which by nature would continue beyond the termination, cancellation or expiration thereof, shall survive termination, cancellation or expiration hereof.

**ARTICLE 43. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION and/or
PROTECTED HEALTH INFORMATION**

Intentionally Omitted

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Contractor

Miami-Dade County

By: _____

Name: _____

Title: _____

Date: _____

Attest: _____
Corporate Secretary/Notary Public

Corporate Seal/Notary Seal

By: _____

Name: Carlos A. Gimenez

Title: Mayor

Date: _____

Attest: _____
Clerk of the Board

Approved as to form
and legal sufficiency

Assistant County Attorney

ATTACHMENT 6
FEDERALLY REQUIRED CLAUSES

DRAFT

ATTACHMENT 6

FEDERALLY REQUIRED CLAUSES

1. FLY AMERICA REQUIREMENTS

49 U.S.C. §40118
41 CFR Part 301-10

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA REQUIREMENTS

49 U.S.C. 5323(j)
49 CFR Part 661

The contractor agrees to comply with 49 U.S.C. 5323(j) and 49 C.F.R. Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. 5323(j)(2)(C) and 49 C.F.R. 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to the FTA recipient the appropriate Buy America certification (Exhibit FED-BY2) with all bids or offers on FTA-funded contracts, except those subject to a general waiver. Bids or offers that are not accompanied by a completed Buy America certification must be rejected as nonresponsive. This requirement does not apply to lower tier subcontractors.

Certification requirement for procurement of steel, iron, or manufactured products.

3. CHARTER BUS REQUIREMENTS

49 U.S.C. 5323(d)
49 CFR Part 604

INTENTIONALLY OMITTED

3. SCHOOL BUS REQUIREMENTS

49 U.S.C. 5323(F)
49 CFR Part 605

INTENTIONALLY OMITTED

4. CARGO PREFERENCE REQUIREMENTS

46 U.S.C. 1241
46 CFR Part 381

Use of United States-Flag Vessels - The contractor agrees: a. to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; b. to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the FTA recipient (through the contractor in the case of a subcontractor's bill-of-lading.) c. to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

5. SEISMIC SAFETY REQUIREMENTS

42 U.S.C. 7701 et seq. 49
CFR Part 41

Applicability to Contracts

The Seismic Safety requirements apply only to contracts for the construction of new buildings or additions to existing buildings.

The contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The contractor also agrees to ensure that all work performed under this contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

6. ENERGY CONSERVATION REQUIREMENTS

42 U.S.C. 6321 et seq.
49 CFR Part 18

The contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

7. CLEAN WATER REQUIREMENTS

33 U.S.C. 1251

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

8. BUS TESTING

49 U.S.C. 5323(c)
49 CFR Part 665

Applicability to Contracts

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

The Contractor [Manufacturer] agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

- 1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.
 - 2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.
 - 3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.
 - 4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.
-

9. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

49 U.S.C. 5323
49 CFR Part 663

Applicability to Contracts

The Bus Testing requirements pertain only to the acquisition of Rolling Stock/Turnkey.

Pre-Award and Post-Delivery Audit Requirements - The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.

(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

BUY AMERICA CERTIFICATE OF COMPLIANCE WITH FTA REQUIREMENTS
FOR BUSES, OTHER ROLLING STOCK, OR ASSOCIATED EQUIPMENT

10. LOBBYING

31 U.S.C. 1352
49 CFR Part 19
49 CFR Part 20

Contractors who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

Certification for Contracts, Grants, Loans, and Cooperative Agreements (Exhibit FED-LB1) to be submitted with each bid or offer exceeding \$100,000.

11. ACCESS TO RECORDS AND REPORTS

49 U.S.C. 5325
18 CFR 18.36 (i)
49 CFR 633.17

The following access to records requirements apply to this Contract:

1. Where the Purchaser is not a State but a local government and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C. F. R. 18.36(i), the Contractor agrees to provide the Purchaser, the

FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where the Purchaser is a State and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 633.17, Contractor agrees to provide the Purchaser, the FTA Administrator or his authorized representatives, including any PMO Contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a)1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311. By definition, a major capital project excludes contracts of less than the simplified acquisition threshold currently set at \$100,000.

3. Where the Purchaser enters into a negotiated contract for other than a small purchase or under the simplified acquisition threshold and is an institution of higher education, a hospital or other non-profit organization and is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 C.F.R. 19.48, Contractor agrees to provide the Purchaser, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.

4. Where any Purchaser which is the FTA Recipient or a subgrantee of the FTA Recipient in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a)1) through other than competitive bidding, the Contractor shall make available records related to the contract to the Purchaser, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

5. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

6. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until the Purchaser, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. Reference 49 CFR 18.39(i)(11).

12. FEDERAL CHANGES

49 CFR Part 18

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the [Master Agreement](#) between Purchaser and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

13. BONDING REQUIREMENTS

TBD

14. CLEAN AIR

42 U.S.C. 7401 et seq
40 CFR 15.61
49 CFR Part 18

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq . The Contractor agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

15. RECYCLED PRODUCTS

42 U.S.C. 6962
40 CFR Part 247
Executive Order 12873

The contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

16. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

Background and Application

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that “at least partly are financed by a loan or grant from the Federal Government.” 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). ‘Construction,’ for purposes of the Acts, includes “actual construction, alteration and/or repair, including painting and decorating.” 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (see 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below.

The clause language is drawn directly from 29 CFR 5.5(a) and any deviation from the model clause below should be coordinated with counsel to ensure the Acts’ requirements are satisfied.

(1) **Minimum wages** - (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer

or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - The [*insert name of grantee*] shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the [*insert name of grantee*] may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(3) **Payrolls and basic records** - (i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the [*insert name of grantee*] for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The

prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate)

specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) **Compliance with Copeland Act requirements** - The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) **Subcontracts** - The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) **Disputes concerning labor standards** - Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) **Certification of eligibility** - (i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

17. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

40 USC 3701

Background and Application

The Contract Work Hours and Safety Standards Act is codified at 40 USC 3701, *et seq.* The Act applies to grantee contracts and subcontracts "financed at least in part by loans or grants from ... the [Federal] Government." 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6). Although the original Act required its application in any construction contract over \$2,000 or non-construction contract to which the Act applied over \$2,500 (and language to that effect is still found in 49 CFR 18.36(i)(6)), the Act no longer applies to any "contract in an amount that is not greater than \$100,000." 40 USC 3701(b)(3) (A)(iii).

The Act applies to construction contracts and, in very limited circumstances, non-construction projects that employ "laborers or mechanics on a public work." These non-construction applications do not generally apply to transit procurements because transit procurements (to include rail cars and buses) are deemed "commercial items." 40 USC 3707, 41 USC 403 (12). A grantee that contemplates entering into a contract to procure a developmental or unique item should consult counsel to determine if the Act applies to that procurement and that additional language required by 29 CFR 5.5(c) must be added to the basic clause below.

The clause language is drawn directly from 29 CFR 5.5(b) and any deviation from the model clause below should be coordinated with counsel to ensure the Act's requirements are satisfied.

The Contractor agrees to comply with the following:

(1) **Overtime requirements** - No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; liability for unpaid wages; liquidated damages** - In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated

damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages - The (write in the name of the grantee) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) Subcontracts - The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

18. [RESERVED]

19. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

(1) The Purchaser and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the Purchaser, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

(2) The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS
AND RELATED ACTS

31 U.S.C. 3801 et seq.
49 CFR Part 31 18 U.S.C. 1001
49 U.S.C. 5307

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or

causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

(3) The Contractor agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

21. TERMINATION

49 U.S.C. Part 18
[FTA Circular 4220.1E](#)

See Attachment 5, Article 23.

22. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION

49 CFR Part 29
Executive Order 12549

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the contractor is required to verify that none of the contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the bidder or proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by the County. If it is later determined that the bidder or proposer knowingly rendered an erroneous certification, in addition to remedies available to the County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

23. PRIVACY ACT

5 U.S.C. 552

Applicability to Contracts

When a grantee maintains files on drug and alcohol enforcement activities for FTA, and those files are organized so that information could be retrieved by personal identifier, the Privacy Act requirements apply to all contracts.

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974,

5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

24. CIVIL RIGHTS REQUIREMENTS

29 U.S.C. § 623, 42 U.S.C. § 2000
42 U.S.C. § 6102, 42 U.S.C. § 12112
42 U.S.C. § 12132, 49 U.S.C. § 5332
29 CFR Part 1630, 41 CFR Parts 60 et seq.

The following requirements apply to the underlying contract:

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations,

and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(3) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

25. BREACHES AND DISPUTE RESOLUTION

49 CFR Part 18

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of the County's Project Manager. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the Project Manager. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Project Manager shall be binding upon the Contractor and the Contractor shall abide by the decision.

Performance During Dispute - Unless otherwise directed by the County, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between the County and the Contractor arising out of or relating to this agreement or its breach will be decided by arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which the County is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by the County or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

26. PATENT AND RIGHTS IN DATA

37 CFR Part 401
49 CFR Parts 18 and 19

Intentionally Omitted

27. TRANSIT EMPLOYEE PROTECTIVE AGREEMENTS

49 U.S.C. § 5310, § 5311, and § 5333
29 CFR Part 215

Applicability to Contracts

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a Contractor recognized by FTA to be a transit operator. (Because transit operations involve many activities apart from directly driving or operating transit vehicles, FTA determines which activities constitute transit "operations" for purposes of this clause.)

(1) The Contractor agrees to the comply with applicable transit employee protective requirements as follows:

(a) General Transit Employee Protective Requirements - To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

(b) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5310(a)(2) for Elderly Individuals and Individuals with Disabilities - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the Contractor agrees to carry out the Project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the U.S. DOL's letter of certification to FTA, the date of which is set forth Grant Agreement or Cooperative Agreement with the state. The Contractor agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that U.S. DOL letter.

(c) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C.

§ 5311 in Nonurbanized Areas - If the contract involves transit operations financed in whole or in part with Federal assistance authorized by 49 U.S.C. § 5311, the Contractor agrees to comply with the terms and conditions of the Special Warranty for the Nonurbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by U.S. DOL or any revision thereto.

(2) The Contractor also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with Federal assistance provided by FTA.

28. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

49 CFR Part 26

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The agency's overall goal for DBE participation is **15%**.

b. The contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the County deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor's receipt of payment for that work from the County. In addition, is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed.

e. The contractor must promptly notify the County, whenever a DBE subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. The contractor may not terminate any DBE subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of the County.

29. [RESERVED]

30. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

FTA Circular 4220.1F

The general contract provisions include, in part, certain Standard Terms and Conditions required by DOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, dated June 19, 2003, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any County requests, which would cause the County to be in violation of the FTA terms and conditions.

31. DRUG AND ALCOHOL TESTING

49 U.S.C. §5331
49 CFR Parts 653 and 654

Applicability to Contracts

The Drug and Alcohol testing provisions apply to Operational Service Contracts.

The contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of Florida, or the County, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before February 15th and to submit the Management Information System (MIS) reports before February 15th to the County's Project Manager. To certify compliance the contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

32. ADA Access

49 CFR Part 37
36 CFR Part 1192 and 49 CFR Part 38

Rolling stock must comply with the accessibility requirements of DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR Part 37, and Joint ATBCB/DOT regulations, "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR Part 1192 and 49 CFR Part 38.

33. Special DOL EEO Clause for Construction Projects

(Applicable to all Federal-aid construction contracts and to all related subcontracts of \$10,000 or more.)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under **41 CFR 60-4.3** and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:
 - a) The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.
 - b) The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training
2. EEO Officer: The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.
3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

- a) Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.
 - b) All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.
 - c) All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.
 - d) Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.
 - e) The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.
4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.
- a) The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.
 - b) In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)
 - c) The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.
5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:
- a) The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

- b) The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.
- c) The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.
- d) The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. Training and Promotion:

- a) The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.
- b) Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.
- c) The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.
- d) The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

- a) The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.
- b) The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.
- c) The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor

union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

- d) In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.
8. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.
- a) The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.
 - b) Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.
 - c) The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.
9. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of- three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.
- a) The records kept by the contractor shall document the following:
 - 1) The number of minority and non—minority group members and women employed in each work classification on the project;
 - 2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;
 - 3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and
 - 4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

- b. The contractors will submit an annual report to the SHA each July for the duration of the project, indicating the number of minority, women, and non—minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data.
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DRAFT

ATTACHMENT 7

FEDERAL TRANSIT ADMINISTRATION AFFIDAVITS

ATTACHMENT 7

EXHIBIT FED-DB-1

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION (LOWER TIER COVERED TRANSACTION)

The prospective Lower Tier Participant certifies, by submission of this bid or proposal, that neither it nor its "principals" as defined at 49 C.F.R. 29.105(p) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

If the prospective Lower Tier Participant is unable to certify to the statement above, it shall attach an explanation, and indicate it has done so, by placing an "X" in the following space: _____.

THE BIDDER OR OFFEROR, _____, CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THIS CERTIFICATION AND EXPLANATION, IF ANY.

IN ADDITION, THE LOWER-TIER BIDDER OR OFFEROR UNDERSTANDS AND AGREES THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. APPLY TO THIS CERTIFICATION AND EXPLANATION, IF ANY.

Signature of Participant's Authorized Official

Name and Title of Participant's Authorized Official

Date

DRAFT

EXHIBIT FED-LB1**LOBBYING CERTIFICATION****Certification for Contracts, Grants, Loans, and Cooperative Agreements**

The Contractor certifies, to the best of its knowledge and belief that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an Federal department or agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification thereof.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by Government wide Guidance for New Restrictions on Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed Reg 1413 (1/19/96). Note: Language in paragraph (2) herein has been modified in accordance with Section 10 of the Lobbying Disclosure Act of 1995 (P.L. 104-65, to be codified at 2 U.S.C. 1601, et seq.)]
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers (including subcontracts, sub grants, and contracts under grants, loans, and cooperative agreements), and that all sub recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

[Note: Pursuant to 31 U.S.C. 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.]

The Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. 3801 et seq. apply to this certification and disclosure, if any.

Signature of Contractor's Authorized Official

Name and Title of Contractors Authorized Official

Date

EXHIBIT FED-BY2

**BUY AMERICA
CERTIFICATE OF COMPLIANCE OR NON-COMPLIANCE**

The Buy America requirements apply to the following types of contracts: Construction Contracts and Acquisition of Goods or Rolling Stock (valued at more than \$100,000).

If the bidder does not submit a signed certification with the bid, submits the wrong certification of compliance, that bid is non-responsive and cannot be considered.

- ☐ Certification requirement for procurement of steel, iron, or manufactured products. Certificate of Compliance with 49 U.S.C. 5323(j)(1). The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.5.
- ☐ Certification requirement for procurement of buses, other rolling stock and associated equipment. Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C). The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 C.F.R. Part 661.11.
- ☐ Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1). The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1) or 49 U.S.C. 5323(j)(2)(C), and 49 C.F.R. 661.5 or 49 C.F.R. Part 661.11, but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(A), 5323(j)(2)(B), or 5323(j)(2)(D), and 49 C.F.R. 661.7.

Date _____

Signature _____

Company Name _____

Title _____

EXHIBIT FED-DA1

CERTIFICATION OF PERFORMANCE OF SAFETY-SENSITIVE FUNCTIONS

I, _____, _____,
(Print Name) (Title)

representing _____, certify that, based on
(Name of Company)

the definitions in 49 CFR part 655 safety-sensitive functions are to be performed for Miami-Dade Transit by

_____ under Purchase Order or Contract Number
(Name of Company)

_____ entitled _____.
(Bid No.) (Bid Title)

I further certify that by _____ 20_____, _____
(Date) (Name of Company)

will be in compliance with 49 CFR part 655- Prevention of Alcohol and Prohibited Drug Misuse in Transit Operations. I understand that this will require that my company establish and maintain a comprehensive drug and alcohol program in accordance with each section of 49 CFR parts 655 and CFR 40.

ACKNOWLEDGMENT

Representative's Signature

INFORMATION FOR MDT BIDDERS LIST

Bid Description: _____

Bid No.: _____ SIC: _____

Instructions to Bidders: Prime must complete a form for itself and must provide a form for each firm which was contacted as a potential subcontractor. An authorized representative of each firm must complete and sign this affidavit.

BIDDER INFORMATION:

Firm Name: _____ F.E.I.D. _____

Street Address: _____ Suite No.: _____

City: _____ State: _____ Zip Code: _____

Submitted as Prime Bidder?: Yes ____ No ____ If No, enter name of Prime: _____

Year Firm Founded: _____ Annual Gross Receipts of Firm: \$ _____

Phone No.: _____ FAX No.: _____ Email: _____

DBE INFORMATION

Certified in Dade County as DBE?: Yes ____ No ____ If Yes, enter expiration date: ____/____/____

Ethnicity (Circle one): Black _____ Hispanic _____ Native American _____ Asian-Pacific American _____
 Subcontinent Asian American _____ Other: _____

Gender: Male ____ Female ____ DBE Commitment by Prime: _____%

AFFIDAVIT

I affirm that the information submitted is correct to the best of my knowledge.

 Signature Name printed or typed Title Date

For MDT use only: Was the subject bid awarded to this prime? Yes ____ No ____
 DBE Goal? Yes ____ No ____ DBE Goal Percent ____ %

CERTIFICATION OF COMPLIANCE WITH FTA'S BUS TESTING REQUIREMENTS

The undersigned [Contractor/Manufacturer] certifies that the vehicle offered in this procurement complies with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665.

The undersigned understands that misrepresenting the testing status of a vehicle acquired with Federal financial assistance may subject the undersigned to civil penalties as outlined in the Department of Transportation's regulation on Program Fraud Civil Remedies, 49 CFR Part 31. In addition, the undersigned understands that FTA may suspend or debar a manufacturer under the procedures in 49 CFR Part 29.

Date: _____

Signature: _____

Company Name: _____

Title: _____

ATTACHMENT 8
DBE/AFFIRMATIVE ACTION REQUIREMENTS

ATTACHMENT 8

DBE/AFFIRMATIVE ACTION REQUIREMENTS COMPRESSED NATURAL GAS PROGRAM (CNG) CONTENTS

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SECTION I: DEPARTMENT OF LABOR - AFFIRMATIVE ACTION REQUIREMENTS

A. LABOR PROVISIONS

1. Minimum Wages.

a. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deduction as are permitted by regulations issued by the Secretary of Labor under the Copeland Act, 29 C.F.R. Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, That the employer's payroll records accurately reflect the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a) (1) (ii) of 29 C.F.R. 5.5 (a) (1) (ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The Contracting Officer shall require that any class of laborers or mechanics, including helpers, that is not listed in the wage determination and that is to be employed under the contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(a) Except with respect to helpers as defined in 29 C.F.R. § 5.2(n) (4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(b) The classification is utilized in the area by the construction industry; and

(c) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination;

(d) With respect to helpers as defined in 29 C.F.R. § 5.2(n) (4), such a classification prevails in the area in which the work is performed.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representative, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of The Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor,

Washington, D.C. 20210, who will approve, modify, or disapprove the classification action or will notify the Contracting Officer that additional time is needed, within 30 days of receipt of the request.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions including the views of all interested parties and recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination or notify the Contracting Officer that additional time is necessary, within 30 days of receipt of the request.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to 29 C.F.R. § 5.5(a)(i)(1)(B) or 29 C.F.R. § 5.5(a)(i)(1)(c), shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or another third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding.

The Department of Transportation and/or MDC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the contractor, under this agreement or any other Federal contract with MDC or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, FTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and Basic Records.

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or cost anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (b) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably

anticipated in providing benefits under a plan or program described in section 1(b)(2)(b) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated of or the actual costs incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) the contractor shall submit weekly copies of its complete and accurate payrolls, which must be in accordance with 29 C.F.R. 5.5 (a) (3) (i) and similarly those of its subcontractors. Such payrolls may be submitted on form WH-348 or on any identical form with identical wording, which can be purchased from the Superintendent of Documents (Federal Stock No. 029-005-00014-1), U.S. Government Printing Office; Washington, D.C. 20402.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(a) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R 5.5. (a)(3)(i) and that such information is correct and complete;

(b) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth at 29 C.F.R. Part 3;

(c) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-348 shall satisfy the requirement for submission of the "Statement of Compliance" required by 29 C.F.R. 5.5(a)(3)(ii)(b).

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

c. The contractor or subcontractor shall make the records required under 29 C.F.R. 5.5 (a)(3)(ii) available for inspection, copying, or transcription by authorized representatives of FTA or the department of labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or make them available, FTA may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

4. Apprentices and Trainees.

a. Apprentices.

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the Apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the bureau, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees.

Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeyman on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination, which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c Equal Employment Opportunity. The utilization of apprentices, trainees, and journeyman under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 C.F.R. part 30.

d. Helpers.

Helpers will be permitted to work on a project if the helper classification is specified on an applicable Wage Determination or is approved pursuant to the conformance procedure set forth in 29 C.F.R. § 5.5(a)(1)(ii). The allowable ratio of helpers to journeymen employed by the contractor or subcontractor on the job site shall not be greater than two helpers for every three journeymen (in other words, not more than 40 percent of the total number of journeymen and helpers in each contractor's or in each subcontractor's own work force employed on the job site.) Any worker listed on a payroll at a helper wage rate, who is not a helper as defined in 29 C.F.R. § 5.2(n)(4), shall be paid not less than the applicable wage rate on the Wage Determination for the classification of work actually performed. In addition, any helper performing work on the job site in excess of the ratio permitted shall be paid not less than the applicable journeyman's (or laborer's, where appropriate) wage rate on the wage determination for the work actually performed.

5. Compliance with Copeland Act requirements.

The contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated herein by reference.

6. Contract termination: debarment.

A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

7. Compliance with Davis-Bacon and Related Act requirements.

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are incorporated herein by reference.

8. Disputes concerning labor standards.

Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontracts) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

9. a. Certification of eligibility. By entering into a third party contract financed under this project, the contractor certifies that neither it (nor he or she) nor any person or firm that has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3 (a) of the Davis-Bacon Act or 29 C.F.R. 5.12 (a) (1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a) (1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

10. Overtime requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in the workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

11. Violation; liability for unpaid wages; liquidated damages.

In the event of any violation of the requirements of 29 C.F.R. 5.5 (b) (1), the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of 29 C.F.R. 5.5 (b) (1) in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by 29 C.F.R. 5.5 (b) (1).

12. Withholding for unpaid wages and liquidated damages.

FTA or MDC shall upon its own action or upon written request of any authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth at 29 C.F.R. 5.5 (b)(2).

13. Safe Working Conditions.

Section 107 of C. W. H. S. S. A. (Contract Work Hours and Safety Standards Act, 29 CFR 5) is applicable to construction contracts and provides that no laborer or mechanic shall be requested to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his health and safety as determined under construction, safety and health standards promulgated by the Secretary of Labor. These requirements do not apply to the purchase of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

14. Non-Construction contracts

The requirements of the clauses contained in 29 C.F.R. 5.5 (b) or paragraphs (10) through (13) of Section 112.a. of Part II Terms and Conditions (Master Agreement) of the Federal Transit Administration agreement, are applicable in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. 5.1. The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized

representatives of FTA, DOT, or the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

15. Subcontracts.

The contractor or subcontractor shall insert in any subcontracts the clauses set forth in subparagraphs (1) through (12) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth on subparagraphs (1) through (12) of this paragraph.

B. NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (Executive Order 11246 as amended by Executive Order 11375):

1. The Offeror's or Proposer's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

a. Goals and timetables for minority participation:

Timetable Trade Goal (percent)

Until further notice All 39.5

b. Goals and timetables for the utilization of women:

Timetable Trade Goal (percent)

Until further notice All 6.9

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regards to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the Contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for

construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is Miami-Dade County, Florida.

C. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (Executive Order 11246 as amended by Executive Order 11375):

1. As used in these Specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d Except for Section III of these Affirmative Action Requirements, "minority" includes:

(1) Black: A person having origins in any of the black groups of Africa;

(2) Hispanic: A person of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race;

(3) Portuguese: A person of Portuguese, Brazilian or other Portuguese culture of origin, regardless of race.

(4) Asian American: A person having origins in any of the original peoples of the Far East Southeast Asia, the Indian subcontinent or the Pacific Islands;

(5) American Indian and Alaskan Native: A person having origins in any of the original peoples of North America.

(6) Members of other groups or other individuals found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637 (a)).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is

individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a through p of this Section I. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in Notice Form, and such Notices may be obtained from any office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress toward its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 as amended, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources complied under I.B.7 above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any jobsite. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the opening, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's workforce.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

- n. Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (I.B.7.a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, or national origin.
11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 as amended.
12. The contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph I.B.7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g. mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

SECTION II: EQUAL OPPORTUNITY/NONDISCRIMINATION

A. EQUAL EMPLOYMENT OPPORTUNITY

In connection with the execution of this contract, the contractor shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, disability, ancestry, marital status, pregnancy, sexual orientation, veteran's status, or national origin. The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, age, disability, marital status, pregnancy, sexual orientation, veteran's status, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeships. Contractor further agrees to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by MDC setting forth the provisions of this Equal Opportunity clause.

B. DISCRIMINATION PROHIBITED

The Contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or any other remedy as MDC deems appropriate. (49 CFR Part 26.13(b))

C. NONDISCRIMINATION (General)

The proposer will comply with all regulations of the U. S. Department of Transportation, all applicable provisions of the Civil Rights act of 1964, Executive Order 11246 of September 24, 1964 as amended by Executive Order 11375 Executive Order 11625 of October 13, 1971, the Age Discrimination in Employment Act effective June 12, 1968, the rules regulations and relevant orders of the Secretary of Labor, Chapter 760 (Florida Civil Rights Act of 1992, as amended); Dade County Ordinance 75-46 and Articles 3 and 4 of Chapter 11a of the Code of Miami-Dade County which prohibit discrimination because of race, color, religion, ancestry, sex, pregnancy, national origin, age, handicap, marital status or familial status of any individual.

D. NONDISCRIMINATION: ("Equal Opportunity Clause")

During the performance of this Contract, the Contractor agrees as follows:

1. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color religion, sex or national origin. such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to provide setting forth the provisions of this nondiscrimination clause.
2. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, age, ancestry, marital status, handicap, place of birth, or national origin.
3. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, as applicable, a notice to provided contractors advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
4. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, and by rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by MDC and Compliance Review Agencies for purposes of investigation to ascertain compliance with such rules, regulations and orders. Reports shall be submitted quarterly or as MDC may require.
5. In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375 and such other sanctions as may be imposed and remedies invoked as provided in Executive Order 11246 as amended or by rules, regulations, or orders, of the Secretary of Labor, or as otherwise provided by law.
6. The Contractor will include all of these paragraphs A through C and D1 through D6 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965 as amended by Executive Order 11375, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as MDC may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as the result of such direction by MDC, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

Note: FTA directs MDC, and MDC does require each contractor or subcontractor to include the above paragraphs A through C and D1 through D6 in each of its contracts.

E. DISABILITY NONDISCRIMINATION.

It is hereby declared to be the national policy that elderly persons and persons with disabilities have the same right as other persons to utilize mass transportation and services; that special efforts shall be made in the planning and design of mass transportation facilities and services so that the availability to elderly persons and persons with disabilities of mass transportation which they can effectively utilize will be assured; and that all Federal programs offering assistance in the field of mass transportation (including the programs under this chapter) should contain provisions implementing this policy. (49 U.S.C. Part 5301. [d].)

Disabilities – In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, “Regulations to implement the Equal Employment Provisions of the Americans with Disabilities Act,” 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities.

ADA ACCESS:

In accordance with section 102(a) as amended, FR 28 CFR Part 35 and 36, section 202, as amended, 29 U.S.C. 794d, and section 228(a)(1), FR 49 CFR, Parts 27, 37, and 38, the Contractor agrees that it will comply with the requirements of the Americans with Disabilities Act Rules and Regulations prohibiting discrimination based on disability: “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” Also, the contractor agrees to comply with requirements pertaining to existing facilities used in the provision of designated public transportation services: “it shall be considered discrimination, for purposes of section 202 of this Act and section #504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), for a public entity to fail to operate a designated public transportation program or activity conducted in such facilities so that, when viewed in the entirety, the program or activity is readily accessible to and usable by individuals with disabilities. In addition, the Contractor agrees to comply with any implementing requirements Miami-Dade Transit and/or FTA may issue.

F. LIAISON OFFICER

Within 10 days after Notice to Proceed the Contractor shall designate a liaison officer who will monitor the Contractor's Affirmative Action Program and prepare the required reports.

SECTION III: DISADVANTAGED BUSINESS ENTERPRISE AFFIRMATIVE ACTION REQUIREMENTS

A. DEFINITIONS: As used in this Disadvantaged Business Enterprise (DBE) Contractor Participation Provision ("Provision"), the following terms shall have the following meanings (the definitions shall not apply outside of this Provision where inconsistent with those contained elsewhere in the bid documents):

1. A&E Utilization Report - A monthly report in the form annexed to this Provision, containing certain information with respect to work to be performed by DBE Contractors.
2. Affirmative Action - Positive activities undertaken to eliminate discrimination and effects of past discrimination and to ensure nondiscriminatory practices in the future.
3. Affidavit of No Change- an affidavit from a certified DBE, affirming that the DBE continues to meet the eligibility criteria of 49 CFR Part 26.
4. Board - Board of County Commissioners, Miami-Dade County, Florida.

5. Challenge - A formal filing by a third party to rebut the presumption that a particular individual is socially and economically disadvantaged.
6. Commercially Useful Function – When a DBE is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself, in light of industry practices and other relevant considerations. If, MDC has any reason to believe that a firm, while an eligible DBE, is not performing a commercially useful function in a particular transaction, the contractor will not receive credit toward the goal.
7. Compliance Monitor - A person designated by the Director of MDC to assist and to make recommendations to MDC with respect to compliance with this Provision.
8. Contract - A legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them; the Contract, executed by MDC and the successful proposer, of which this Provision is a part. For the purposes of this program, a lease is considered to be a contract.
9. Contract Goal - DBE participation goal established by the Board of County Commissioners for this Contract solicitation.
10. Contract Price - the total bid price of the successful proposer as awarded by the Board of County Commissioners.
11. Contracting Officer - The Director of the Miami-Dade Transit or his/her designee.
12. Contracting Opportunity - Any decision by the Miami-Dade Transit or contractor to institute a procurement action to obtain a product or service commercially (as opposed to intergovernmental actions).
13. DBE Certification Letter - A letter issued to a firm by the State of Florida Unified Certification Program (UCP) certifying member or agency, declaring that the firm is certified as a DBE.
14. DBE Directory - a registry of DBEs that are certified by Miami-Dade County, published to aid in the location of certified DBE.
15. Disadvantaged Business Enterprise or DBE A "for-profit" small business concern
 - a. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged as defined in 49 CFR Part 26.5, or in the case of a corporation, in which at least 51 percent of the stock of which is owned by one or more such individuals; and
 - b. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
16. Goal – a percentage of the total contract price that is to be expended with certified DBE
17. Letter of Intent a letter, in the form annexed to this Provision, to be signed by a DBE with respect to certain work under the Contract.

18. Manufacturer - An individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the Miami-Dade Transit, Contractor, or Transit Vehicle Manufacturer.
19. MDC - Miami-Dade County, Dade County or the County or Miami-Dade Transit or MDT as referred to in the Contract Documents.
20. Primary Recipient - A grantee who receives DOT financial assistance and passes all or some of the assistance on to a subrecipient.
21. Proposer - An individual, firm, partnership, corporation, joint venture, or combination thereof submitting a bid for construction work.
22. Qualified - a Contractor is qualified to do specific work if it meets all of the following criteria:
- a. It has or is able to obtain any and all licenses required to do such work;
 - b. It has the necessary experience, organization, technical qualifications skills and facilities to do such work;
 - c. It is able to comply with the performance schedule reasonably needed for such work;
 - d. It does not have an unsatisfactory record of integrity, judgment and performance;
 - e. It is able to meet the applicable equal employment opportunities requirements; and
 - f. It is not otherwise ineligible to perform such work under applicable laws and regulations.
23. Recipient - means any entity, public or private, to which financial assistance from the U. S. Department of Transportation (DOT) is extended whether directly or through another recipient, through the programs of the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), or the Federal Aviation Administration (FAA), or who has applied for such assistance.
24. Regular Dealer means a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this definition.
25. A Small Business Concern, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, is defined in section 3 of the Small Business Act and in Small Business Administration regulations implementing the Act (13 CFR Part 121). Additionally, a small business concern cannot exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).
26. Socially and Economically Disadvantaged Individual - means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- a. Any individual who MDC finds to be a socially and economically disadvantaged individual on a case-by-case basis.
 - b. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (1) "Black Americans," which includes persons having origins in any of the black racial groups of Africa;
 - (2) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;
 - (3) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (4) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U. S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (5) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (6) Women;
 - (7) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.
27. Schedule of Participation by DBEs a schedule, in the form annexed to this Provision, containing certain information with respect to work to be performed by DBEs. It is the schedule that lists the Certified DBEs with which the proposer intends to subcontract with, specifying price, a proposed timetable stating commencement and completion dates, and other information as may be outlined on the schedule.
28. Sub recipient - Any entity that receives Federal financial assistance from FTA through a primary recipient.
29. Successful proposer - the proposer to which the Contract is awarded.
30. Transportation Improvement Program (TIP) means an annual or biennial listing of capital and operating assistance projects proposed for funding by FTA.
31. Unavailable - a Contractor is unavailable to do specific work if:
- a. It has that knowledge of the terms and specifications of the Contract needed to formulate intelligently a bid or proposal to do such work or to decline intelligently an opportunity to formulate such a bid or proposal; and
 - b. It does not intend, or is unable, to make a bid or proposal because of lack of interest, inability to meet the reasonable and ordinary demands connected with doing such work, unwillingness to meet the specifications for such work, unwillingness to work on this project or in this geographic area, or such other reason as is determined by MDC to be sufficient.
32. Unified Planning Work Program (UPWP) - A listing of planning projects proposed for funding by FTA.

33. U.S. Department of Transportation Regulations - the final rules and regulations published in the Federal Register (Vol. 64, No. 21, P. 5126 et seq.) dated Tuesday, February 2, 1999, entitled PART 26--PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS.

B. UTILIZATION OF DBES:

1. Affirmative Action Obligation

All projects, with Federal Funding.

a. Policy. MDC is committed to carry out the DBE Program and to meet the objectives stated in the program, including nondiscrimination in the award and administration of DOT assisted contracts in MDC's transit programs; creating a level playing field on which DBEs can compete fairly; and ensuring that MDC's DBE program is narrowly tailored in accordance with applicable law. Consequently, the DBE requirements of 49 CFR Part 26 apply to this project.

b. Obligation. The proposer, DBE or otherwise, agrees to ensure that DBE, as defined in 49 CFR Part 26 and this Provision, are given the opportunity to participate in the performance of this contract for it is financed in whole or in part with Federal Funds. Consequently, the contractor shall take all necessary and reasonable steps pursuant to 49 CFR Part 26 and this Provision to ensure that DBEs have the opportunity to compete for and perform on this contract. Additionally, the proposer shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of this contract.

All determinations of compliance or non-compliance of the proposer with the requirements of this Provision, and of the appropriate consequences of non-compliance, shall be final and binding, except for administrative reconsideration from an adverse decision by MDC as provided in Section 26.53. All determinations shall be final and the result is not administratively appealable to the U.S. Department of Transportation. Nothing in this Provision shall be construed to diminish the legal responsibility or authority of MDC.

2. DBE Goal

A "Stated Goal" is a portion of the total contract dollar amount that a prime contractor is expected to expend through subcontracts with DBE firms. For the purpose of this contract, **such goal is FIFTEEN (15%) PERCENT.**

3. DBE Contractor/Bidder/Proposer

A Bidder or Proposer which is itself a DBE Contractor may, subject to compliance with the applicable requirements of Section III.B.(1) and (2) of this Provision, achieve the stated goal by performing work with its own forces a value at least equal to the percentage goal.

4. Title VI Compliance (Civil Rights Act of 1964)

During the performance of this contract, the contractor itself, its assignees and successors in interest (hereinafter referred to as the "contractor"), agrees as follows:

a. Compliance with Regulations: The contractor shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal

Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

b. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

c. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

d. **Information and Reports:** The contractor shall provide all information and reports required by the regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information and its facilities as may be determined by Miami-Dade County or the Federal Transit Administration (FTA) to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required from a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to Miami-Dade County, or to the Federal Transit Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

e. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, Miami-Dade County shall impose such contract sanctions as it or the Federal Transit Administration may determine to be appropriate, including, but not limited to:

(1) Withholding of payments to the contractor under the contract until the contractor complies, and/or

(2) Cancellation, termination or suspension of the contract, in whole or in part.

f. **Incorporation of Provisions:** The contractor shall include the provisions of paragraph III.B.4.a. through III.B.4.f. of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurements as Miami-Dade County or the Federal Transit Administration may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request Miami-Dade County to enter into such litigation to protect the interests of Miami-Dade County, and, in addition, the contractor may request the services of the Attorney General in such litigation to protect the interests of the United States.

C. REQUIREMENTS PRIOR TO CONTRACT AWARD

1. Bid Submittal

All vendors are required to register and use the Miami-Dade County Disadvantaged Business Enterprise (DBE) Tracking Software. In order to register, please go to:

<http://www.miamidade.gov/transit/disadvantaged-business-enterprise.asp> and click on the DBE Tracking Software button in the center of the page to access the software LOGIN page. Click the "Register" link and complete the required information. During the registration process, a login/password will be created which will then be used as the vendor's login when using the system. The HELP menu option provides access to a user manual that instructs the vendor on the system's use.

At the time of submittal, all proposals shall include an executed Certification of Assurance, and a completed Prime and Subcontractor Information Form for each proposer and one for each subcontractor who submitted a bid.

A proposal that fails to include the Certificate of Assurance, and the Prime and Subcontractor Information Form and has not registered in the DBE Software may be deemed non-responsive.

2. Submittal Prior to Negotiation/Award

a. Each selected proposer, in order to be eligible for award consideration, shall submit the following documents to MDC at the minimum two (2) days prior to negotiation/award, for each DBE:

(1) Schedule of Participation – executed by the prime.

(2) A Letter of Certification/DBE Contractor Identification Statement or other document from the Miami-Dade County Department of Business Development, or the Uniform Certification Program (UCP) for each proposed DBE firm showing that the firm possesses a currently valid certification as a Disadvantaged Business Enterprise.

(3) Submittal of Contracts with each DBE on the selected contractor's team must submit an Affidavit of No Change, indicating that since the firm has been certified that it continues to meet the DBE eligibility requirements of U.S. DOT, 49 CFR Part 26, and the U.S. small Business Administration, 13 CFR Part 21.

(4) A completed and signed Letter of Intent by each DBE listed in the Schedule of Participation indicating readiness to perform the work described for the amounts stated in the Schedule for Participation.

A selected proposer(s) which does not submit all four forms may be found non-responsive and may therefore be subject to disqualification by MDC.

2. After Opening of Bids

a. Good Faith Effort.

(1) When MDC establishes a DBE goal on a DOT-assisted contract, it requires a proposer, as a condition of responsiveness, to make good faith efforts to meet the goal. The proposer can meet this requirement in either of two ways.

(a) The proposer can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. The SCHEDULES FOR PARTICIPATION and the LETTERS OF INTENT can be used for this purpose.

(b) If the proposer does not meet the DBE goal, it can document adequate good faith efforts. This means that the proposer must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. The SCHEDULES FOR PARTICIPATION and the LETTERS OF INTENT may be used as part of this documentation. Information sufficient to satisfy MDC that the proposer has made good faith effort must be submitted to the Clerk of the Board located on the 17th floor of the SPCC Building, 111 NW 1st St., Miami, Florida 33128 by 4:30 p.m. on the second business day following the opening of bids.

(2) In any situation in which MDC has established a contract goal, MDC will use the good faith efforts mechanism spelled out in 49 CFR Part 26, Appendix A. MDC will make a fair and reasonable judgment whether a proposer that did not meet the goal made adequate good faith efforts. MDC will consider the quality, quantity and intensity of the different kinds of efforts that the proposer has made. The efforts employed by the proposer should be those that one could reasonably expect a proposer to take if the proposer were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE Contract Goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. MDC emphasizes that the determination concerning the sufficiency of the proposer's good faith efforts is a judgment call: meeting quantitative formulas is not required.

(3) MDC does not require that a proposer meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, providing the proposer makes an adequate good faith efforts showing. MDC will give fair and serious consideration to bona fide good faith efforts.

(4) The following is a list of types of actions which the proposer should consider as part of its good faith efforts to obtain DBE participation. The list is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

(a) Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The proposer must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The proposer must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

(b) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the contractor might otherwise prefer to perform these work items with its own forces.

(c) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

(d) (i) Negotiating in good faith with interested DBEs. It is the proposers' responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(ii) A proposer using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a proposer's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a contractor to perform the work of a contract with its own organization does not relieve the proposer of the responsibility to make good faith efforts. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

(e) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

(f) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by MDC or contractor.

(g) Making efforts to assist interested DBEs in obtaining necessary equipments, supplies, materials, or related assistance or services.

(h) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

(5) In determining whether a proposer has made good faith efforts, MDC may take into account the performance of other proposers in meeting the Contract goal. For example, when the apparent successful proposer fails to meet the contract goal, but other proposers meet it, MDC may reasonably raise the question of whether, with additional reasonable efforts; the apparent successful proposer could have met the goal. If the apparent successful proposer fails to meet the goal, but meets or exceeds the average DBE participation obtained by other proposers, MDC may view this, in conjunction with other factors, as evidence of the apparent successful proposer having made good faith efforts.

(6) Good Faith Efforts (Invitation for Bid/Request for Proposal). Good faith efforts, under the Invitation for Bid (IFB) method of procurement, to be considered must have been carried out prior to bid opening. Under a Request for Proposal (RFP) or similar method, good faith efforts must have been accomplished prior to receipt of best and final offers. MDC may request any other information as may be required to determine the listed DBE's qualification.

(7) Agreements between a proposer and a DBE in which the DBE promises not to provide subcontracting quotations to other proposers are prohibited. The listing of a DBE by a proposer on its Schedule shall constitute a representation by the proposer that such DBE is Qualified and Not Unavailable, and a commitment by the proposer that if it is awarded the contract, it will enter into a subcontract with such minority contractor for the portion of the work and at the price set forth in its submittal subject to the terms of this Provision.

3. Selection Criteria to Ensure that Prime Contracts Are Awarded to Proposers that Meet the DBE Goal or Demonstrate Good Faith Efforts to Meet the DBE Goal.

a. If any one proposer meets or exceeds the Contract Goal, MDC may take into consideration whether proposers who failed to meet the Goal failed to exert sufficient reasonable efforts to meet the Goal and are, therefore, ineligible to be awarded the contract.

b. MDC reserves the right to award the Contract to a proposer prior to making a final determination as to the DBE status or qualification of a firm listed on the proposer's Schedule. If the DBE status of a firm listed on the proposer's Schedule is disapproved after contract award, the proposer shall remain bound by procedures under Section III.D.

c. DBE Participation shall be counted toward meeting the DBE Goal as follows:

(1) Once a firm is determined by MDC to be an eligible DBE, the dollar value of the work performed by the DBE is counted toward the DBE Goal, except as limited by paragraph III.C.2.c. (2) through III.C.2.c. (4). (49 CFR 26.55(a)).

(2) MDC shall count toward the DBE Goal a portion of the total dollar value of a contract with a joint venture equal to the percentage of the ownership and control of the DBE partner(s) in the joint venture. (26, 55(b))

(3) MDC shall count toward the DBE Goal only expenditures to DBEs that perform a commercially useful function in the work of a contract. (26.55(c))

(a) A DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing and supervising the work involved. To determine whether a DBE is performing a commercially useful function, the proposer shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

(b) Consistent with normal industry practices, a DBE may enter into subcontracts. If a DBE subcontracts a significantly greater portion of the work of the contract than would be expected on the basis of normal industry practices, the DBE shall be presumed not to be performing a commercially useful function.

(4) MDC shall count toward DBE goals expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided that the DBEs assume the actual and contractual responsibility for the provisions of the materials and supplies.

(a) MDC shall count toward DBE goals the entire expenditure to a DBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).

(b) MDC shall count toward DBE goals 60 percent of the expenditures to DBE suppliers that are not manufacturers provided that the DBE supplier performs a commercially useful function in the supply process.

4. Determination of Compliance

The total price for work to be performed by DBEs as indicated in the Proposer's Schedule of Participation by DBEs is required to be sufficient to fulfill the stated goal, unless the Proposer shall demonstrate adequate good faith efforts as provided in III.C.2.c.

5. Award of Contract

MDC shall not award a contract to any Proposer which it determines fails to comply with the applicable requirements of these provisions. Nothing herein shall relieve any Proposer or any Contractor performing any work under the Contract from any of the terms, conditions or requirements of the Contract or modify the Owner's rights as reserved in the Contract Documents.

6. Procedures for Determination of Compliance

Provided the proposer shall have submitted completed forms and information required by Section III.C.1. of this Provision, and its proposal is otherwise responsive to the solicitation, and it is determined by MDC that no proposer with DBE Participation has offered a reasonable price who can demonstrate that it has made sufficient reasonable efforts to meet the DBE contract goal, the proposer who failed to obtain appropriate DBE Participation, but has the lowest reasonable price shall be provided an opportunity to participate in the proceedings set out in this Section III.C.3.

The Proposer's failure to submit completed forms and information as required can neither be cured by supplementary submittals and testimony at hearings, nor shall the non-responsiveness of the bid on account thereof be waived, negotiated or compromised. A proposer shall not be foreclosed from participating in the proceedings provided in this Section because the Disadvantaged Business Enterprise status, non-qualification or unavailability of a Contractor as shown in the bid submitted is questioned by the Compliance Monitor. Further, a Proposer shall not be foreclosed from said proceedings merely because the Compliance Monitor questions the reasonableness of the effort required by these Sections.

a. Investigation and Recommendation by Compliance Monitor.

In the event that the Proposer has not met the stated goals, and has submitted the good faith efforts extended by the Proposer to meet the stated goal, the Compliance Monitor may require that the Proposer meet with the Compliance Monitor at the Miami Dade Transit Agency, 111 N. W. First Street, Suite 910, Miami, FL 33128, phone 305/375-1962, or such other place as the Compliance Monitor may designate.

The purpose of this meeting shall be for the Compliance Monitor to consider whether to recommend that the proposer's proposal be determined to be in compliance with the requirements of this Provision or to recommend award not be made to the proposer. At this meeting the proposer has an opportunity to present information and arguments pertinent to its compliance with the applicable requirements. Upon request of the Compliance Monitor, the proposer shall produce in writing at this meeting the information required in III.C.2.c, including the following:

(1) A detailed statement of the efforts made to contact and negotiate with DBEs, including:

(a) the names, addresses and telephone numbers of DBEs who were contacted;

(b) a description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed; and

(c) a detailed statement of the reasons why additional prospective agreements with DBEs, if needed to meet the stated goal, were not reached;

(2) A detailed statement of the efforts made to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the stated goal;

(3) As to each DBE contacted but which the proposer considered to be not qualified, a detailed statement of the reasons for the proposer's conclusion;

(4) As to each DBE contacted but which the proposer considered to be unavailable, either

(a) a written statement from the DBE that it is unavailable, or

(b) a statement from the proposer that the DBE refused to give such written certification after reasonable request, and a detailed statement from the proposer of the reasons for the proposer's conclusion that the DBE was unavailable (the Statement may be used for this purpose where appropriate);

(5) Attendance at a pre-bid meeting, if any, scheduled by the proposer to inform DBEs of subcontracting opportunities under a given solicitation;

(6) Advertisements in general circulation media, trade association publications, and minority-focus media for at least 20 days before bids or proposals are due concerning subcontracting opportunities (if the interval between MDC advertising is so short that 20 days are not available, then publication for a shorter reasonable time is acceptable).

(7) Efforts made to assist the DBEs contacted that needed assistance in obtaining bonding or insurance required by the proposer or MDC; and

(8) Written notification to DBEs that their interest in the contract is solicited.

The Compliance Monitor may require the proposer to produce such additional information as the Compliance Monitor deems appropriate and may obtain whatever other and further information from whatever other sources he deems appropriate.

Not later than fifteen (15) days after given notice of his initial meeting with the proposer, the Compliance Monitor shall make a written recommendation to the Contracting Officer which shall include a statement of the facts and reasons upon which it is based.

b. Determination by MDC. Following receipt of the Compliance Monitor's recommendation, the Contracting Officer shall send to the proposer a Notice of Opportunity to meet with the Contracting Officer, enclosing a copy of the Compliance Monitor's recommendation. Such Notice shall indicate the date, time and place at which the proposer may, if it so requests in writing, meet with the Contracting Officer and have an opportunity to present pertinent arguments and information relating to the recommendation by the Compliance Monitor regarding the proposer's compliance with this Provision. The Contracting Officer may request such further information from the proposer as it deems appropriate, and may rely upon any factual conclusion reported by the Compliance Monitor which is not contradicted by the proposer. The Contracting Officer may also conduct informal conferences, to which the proposer shall be invited, in which other parties invited by the Contracting Officer may offer information relevant to the issues on which its recommendation to the Board of County Commissioners will be based.

As soon as practicable, the Contracting Officer shall make a determination, in writing and setting forth the facts and reasons upon which it is based, whether the bid of such proposer complies with the requirements of this Provision or recommending to the Board that the Contract not be awarded to the proposer. A copy of such determination shall be sent to the proposer. Such determination shall not affect the power of the Board of County Commissioners to reject the proposer's proposal for any other reason or to take action on the recommendation of the Contracting Officer it deems appropriate.

c. Consideration of Other Bids. If MDC deems it advisable in the interests of expediting the award of the Contract, the procedures set forth in this Section III.C. may be carried out with respect to the bids of one or more additional proposers at the same or different times with each such proceeding to be separately conducted.

d. Failure of proposer to Participate. The proposer will be bound by proceedings under this Provision to which it has been given required notice without regard to its participation or lack of participation in them. Its lack of participation, upon receiving notices and requests pursuant to this Provision, shall not be grounds for reconsideration of any actions taken in the procedure.

6. Substitution of DBEs for those Listed in the Schedule for Participation

A proposer may change information required by this provision from that provided in its Schedule of Participation of DBE only when directed to do so by the Contracting Officer. The Contracting Officer may make such a direction if it determines in the course of any proceeding conducted pursuant to Section III.C.3., that

a. Although listed by a proposer in good faith, a Contractor appearing on the proposer's Schedule is not a DBE, is not qualified or is unavailable and that

b. If the work scheduled to be performed by said Contractor or its equivalent is not performed by a DBE, the proposer will not achieve the level of participation listed on its Schedule.

Upon receiving such a direction, the proposer shall make every reasonable effort to replace a contractor listed in its Schedule with a qualified DBE to perform, for not less than the lesser of the same price or the price necessary to achieve the level of participation listed in its Schedule, the same work or other work not appearing on the Schedule included with its bid or proposal submission. For the purpose of determining the proposer's compliance with this Provision, the revised list of DBEs shall be considered. However, a failure by a proposer to make the efforts required by the preceding paragraph prior to Contract award shall be grounds for a determination by the Board of County Commissioners that the contract not be awarded to the proposer. If a proposer is awarded the Contract and it fails to make such efforts upon notice by MDC, MDC shall subject the proposer to sanctions as provided in Section III.D.4.

D. REQUIREMENTS AND PROCEDURES SUBSEQUENT TO CONTRACT AWARD

1. Proposal, Execution, and Compliance with Subcontracts

a. The successful proposer/contractor shall enter into subcontracts corresponding in all respects to the proposed agreements listed on the contractor's Schedule for Participation by DBEs included in its bid or proposal with substitutions authorized under this Provision. The contractor shall enter into each such approved subcontract and shall thereafter neither terminate any such subcontract nor reduce the scope of the work to be performed by, or decrease the price to be paid to, the DBE thereunder without in each instance the prior written approval of the Contracting Officer.

b. in addition to the requirement in paragraph (a) above, Section III (D) (1), no DBE subcontractor should subcontract any part of its contract without prior written consent from the Contracting Officer.

c. MDC retains the right to approve or disapprove any subcontract with a DBE proposed under this Provision for the same reasons and in the same manner that MDC may approve or disapprove any other subcontract proposed to it. If MDC disapproves a subcontract required to be proposed under this Provision for reasons relating to its form, the contractor shall propose for approval another subcontract with the same DBE, for the same work and at the same price, in a form acceptable to MDC. If MDC disapproves a subcontract required to be proposed under this Provision for any other reason, the contractor shall be excused from proposing that subcontract and shall be subject to the provisions of Section III.D.2 below.

2. Substitution of Subcontractors

a. Excuse from Entering Subcontracts.

If prior to execution of a subcontract required by this Provision, the contractor submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of award of the Contract, a DBE which is to enter into such subcontract has become not Qualified, or that the DBE has unreasonably refused to execute the subcontract, the contractor shall be excused from executing such subcontract.

b. Rightful Termination of Subcontracts.

If, after execution of a subcontract required by this Provision, the contractor submits a written request to the Contracting Officer and demonstrates to the satisfaction of the Contracting Officer that, as a result of a change in circumstances beyond its control of which it was not aware and could not reasonably have been aware until subsequent to the date of execution of such subcontract, a DBE which entered into such subcontract has become not Qualified or has committed and failed to remedy a material breach of the subcontract, the contractor shall be entitled to exercise such rights as may be available to it to terminate the subcontract.

c. Determination of Excuse of Rightful Termination.

If the contractor at any time submits a written request to the Contracting Officer under the provisions of either Section III.D.1. or Section III.D.2., the Contracting Officer, as soon as practicable, shall determine whether the contractor has made the requisite demonstration, and shall not determine that such a demonstration has not been made without first providing the contractor upon notice, an opportunity to present pertinent information and arguments.

d. Alternative Subcontracts.

If the contractor is excused from proposing a subcontract under Section III.D.1. or from executing a subcontract under Section III.D.2.a., or rightfully terminates a subcontract under Section III.D.2.b. and without such subcontract the contractor will not achieve the stated level of DBE participation on which the contract was awarded, the contractor shall make every reasonable effort to propose and enter into an alternative subcontract or subcontracts for the same work to be performed by another Qualified DBE or Contractors for a contract price or prices totaling not less than the contract price under the excused or terminated subcontract, less all amounts previously paid thereunder. The contractor shall be deemed to satisfy the requirements of this Section III.D.2.d. if:

(1) it shall propose and enter each such alternative subcontract for the same work; or

(2) it demonstrates to the satisfaction of the Contracting Officer that it has made every reasonable effort to contact and negotiate with DBEs in an attempt to subcontract such work, but that it was unable to subcontract the work because DBEs were

(a) not Qualified;

(b) Unavailable; or

(c) although Qualified and not Unavailable, unwilling or unable to propose a price for such work equal to or less than the greater of the price originally scheduled for such work (less all amounts previously paid therefor), or the price stated in another bona fide proposal, of which such DBEs had knowledge, submitted by another contractor to which the contractor proposes to subcontract such work; or

(3) it shall propose and enter into subcontracts with another qualified DBE or Contractors, for prices totaling the price originally scheduled for such work (less all amounts previously paid therefor) for the performance of other work not included in its Schedule as it may be modified according to this Provision.

In any situation covered by this Section III.D.2., the Compliance Monitor shall promptly meet with the contractor and provide it an opportunity to demonstrate compliance with these requirements. The Compliance Monitor shall, as promptly as practicable, recommend to the Contracting Officer whether the contractor should be determined to be in compliance with these requirements.

The Compliance Monitor may require the contractor to produce such information as the Compliance Monitor deems appropriate and may obtain whatever other and further information from whatever sources the Compliance Monitor deems appropriate. A copy of the Compliance Monitor's recommendation shall be promptly hand delivered or sent by registered mail to the contractor. The Compliance Monitor shall not make his recommendation under this paragraph without giving the contractor notice and an opportunity to present pertinent information and arguments. MDC will consider objections to the Compliance Monitor's recommendation only if such written objections are received by the Contracting Officer within five (5) calendar days from the contractor's receipt of the Compliance Monitor's recommendation. The Contracting Officer with or without a hearing, as he in his discretion may determine, will reply to the contractor's written objection within ten (10) working days of receipt of these objections.

3. Continued Compliance - MDC shall monitor the compliance of the contractor with the requirements of this Provision during the course of the work to be performed under the Contract. The contractor shall permit MDC to have access to the job site and to necessary records, and to examine such information as appropriate for the purpose of investigating and determining compliance with this Provision, including, but not limited to, manning tables, records of expenditures, change orders, observations at the job site, and contracts between the contractor and other parties entered into during the life of the Contract.

Sanctions for Violations

If at any time MDC has reason to believe that the contractor is in violation of its obligations under this Provision, or has otherwise failed to comply with this Provision, MDC may, in addition to pursuing any other available legal remedy, commence proceedings to impose sanctions on the contractor. Such sanctions may include, but are not limited to, one or more of the following:

- a. The suspension of any payment or part thereof due the contractor until such time as the issues concerning the contractor's compliance are resolved;
- b. The termination or cancellation of the Contract in whole or in part unless the contractor is able to demonstrate within a reasonable time its compliance with the terms of this Provision; and
- c. The denial to the contractor of the right to participate in any further contracts awarded by MDC for a period of not longer than three (3) years. No such sanction shall be imposed by MDC upon the contractor except pursuant to a hearing conducted by the Contracting Officer.

5. DBE Reporting Requirements.

The Contractor shall submit every so often reports of payments made to all subcontractors, including DBEs in this project.

a. Quarterly Reports

Within 15 days of the end of the quarter which the report is for, the contractor shall submit quarterly reports of payments made to all its subcontractors, accompanied by proof of payments made only to its DBEs, pursuant to the schedule outlined on the Quarterly Report Form. Such proof of payments may be copies of canceled checks to and/or signed affidavits from the subcontractors, affirming receipt of specific payments.

6. Prompt Payment.

Pursuant to 49 CFR part 26.29 and 26.37, prime contractors shall pay subcontractors, including DBE'S, for satisfactory performance of their contracts no later than 30 calendar days after the date on which the payment request or a proper invoice is stamped received. Further, the prime contractor will return retainage payments to the subcontractor, including DBE firms, within 30 days of the subcontractor's satisfactory completion of work.

(2) The following correct information constitutes a proper invoice and is required as payment documentation:

- a. Name of Subcontractor;
- b. Invoice date;
- c. Invoicing period;
- d. MDT Contract number;
- e. Subcontractor's invoice number; account number; and/or any other identifying number agreed by contract;
- f. Description and nature of work completed;
- g. Taxpayer Identification Number (TIN);
- h. Bank Information; and/or EFT and Financial EDI Statements
- i. Contact person's name, title and Telephone Number.
- j. Other substantiating documentation, information required by contract.

(3) An invoice shall be deemed to be received on the receipt date stamped on the invoice by the contractor. If the contractor fails to annotate the invoice with a date of receipt, the date placed on the invoice by the subcontractor shall control.

(4) The Prime Contractor shall make timely payment on a payment request or invoice without regard as to whether MDT has tendered payment and/or reimbursement to the Prime contractor.

(5) The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed, and upon which a payment request or proper invoice was submitted and received. Nothing herein shall prohibit a prime contractor or subcontractor from disputing, pursuant to the terms of the contract, all or any portion of a payment alleged to be due to another party.

(6) In the event of a payment dispute, the contractor and subcontractor may withhold the disputed portion of any such payment, if the contractor, or subcontractor notifies the party whose payment is disputed, in writing, of the amount in dispute and the actions required to cure the dispute. The undisputed portion shall be paid timely.

(7) The Prime and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payments disputes, including but not limited to mediation, arbitration and/or an MDT's Ombudsperson.

(8) In cases of disputes, proceedings to resolve the dispute shall be commenced not later than 20 days after the date on which the payment request or proper invoice was received by the contractor and shall be concluded by final decision not later than 30 days after the date on which the payment request or proper invoice was received by the contractor. Such procedures shall not be subject to chapter 120, and such procedures shall not constitute an administrative proceeding which prohibits a court from deciding de novo any action arising out of the dispute. If the dispute is resolved in favor of the Prime Contractor, then interest charges shall begin to accrue 15 days after the final decision. If the dispute is resolved in favor of the subcontractor, then interest shall begin to accrue as of the original date the payment became due.

(9) The prime contractor may reject a payment request or invoice within 10 business days after the date on which the payment request or invoice is stamped as received. The rejection must be written and must specify the deficiency in the payment request or invoice and the action necessary to make the payment request or invoice proper.

(10) If a payment request or an invoice is rejected under subsection (9) and the subcontractor submits a corrected payment request or invoice which corrects the deficiency specified in writing by the prime, the corrected payment request or invoice must be paid or rejected on the later of Ten (10) business days after the date the corrected payment request or invoice was stamped as received.

(11) All payments due under this section and not made within the period specified by this section shall bear interest at the rate of 1.5% per month, or the rate specified by contract whichever is greater.

(12) Late payment interest penalties shall be paid without regard to whether the subcontractor has requested payment of such penalty, and shall be accompanied by a notice stating the amount of the interest penalty, the number of day late and the rate used. Interest payment of less than one dollar need not be paid. In the event of a dispute, interest penalties under this clause will not continue to accrue.

(13) The Prime and subcontractor in their business judgment and of their own volition may negotiate reasonable cash discounts, or any other means of payment reduction for early payments, if the parties can agree to mutually advantageous terms.

(14) A provision in an agreement between a subcontractor and a contractor is void and unenforceable to the extent that it purports to waive or preclude the rights, remedies, or requirements set forth in this subsection; or that it purports to limit it or preclude any liability of the prime contractor to the subcontractor or of the subcontractor to the contractor, arising under this subsection.

SEE ATTACHMENT 9: DBE FORMS

CERTIFICATION OF ASSURANCE FORM

DBE CONTRACTOR IDENTIFICATION STATEMENT

PRIME AND SUBCONTRACTORS INFORMATION FORM

LETTER OF CERTIFICATION

SCHEDULE FOR PARTICIPATION

LETTER OF INTENT FROM DBE SUBCONTRACTOR, SUPPLIER AND/OR CONSULTANT

SUBCONTRACTORS MONTHLY PROGRESS REPORT

AFFIDAVIT OF NO CHANGE

DRAFT

**ATTACHMENT 9
DBE FORMS**

DRAFT

MIAMI-DADE COUNTY

MIAMI-DADE TRANSIT

REQUEST FOR PROPOSALS

CERTIFICATION OF ASSURANCE FORM

The undersigned hereby gives assurance to Miami-Dade County of having identified certified Disadvantaged Business Enterprise firm(s). The undersigned assures it will meet or exceed the DBE goal as stated in the solicitation document.

Authorized Signature

Name

Title

Date

Attachment 9

DBE Forms

MIAMI-DADE COUNTY

MIAMI-DADE TRANSIT

REQUEST FOR PROPOSALS

CERTIFICATION OF ASSURANCE FORM

The undersigned hereby gives assurance to Miami-Dade County of having identified certified Disadvantaged Business Enterprise firm(s). The undersigned assures it will meet or exceed the DBE goal as stated in the solicitation document.

Authorized Signature

Name

Title

Date

DBE CONTRACTOR IDENTIFICATION STATEMENT

1) Name of DBE Contractor _____

2) Year business established _____

3) Address and telephone number _____

4) DBE Type: Women _____ Black _____ Hispanic _____ Other (specify) _____

All DBEs must show ownership percentage by gender-- Male _____% Female _____%

5) Name of principal officer _____

6) Principal type of work _____

7) Name of persons involved in management of firm and positions held:

NAME	RACE	SEX	POSITION/TITLE
A. _____	_____	_____	_____
B. _____	_____	_____	_____
C. _____	_____	_____	_____
D. _____	_____	_____	_____
E. _____	_____	_____	_____

If additional space is needed, please use another sheet.

8) For a Corporation or Professional Association (PA): Identify those who own five percent or more of the firm's stock or five percent or more share of a Professional Association.

NAME	RACE	SEX	OWNERSHIP PERCENTAGE	YEARS OF OWNERSHIP	VOTING PERCENTAGE
A. _____	_____	_____	_____	_____	_____
B. _____	_____	_____	_____	_____	_____
C. _____	_____	_____	_____	_____	_____
D. _____	_____	_____	_____	_____	_____

If additional space is needed, please use another sheet.

(Continued on Page 2)

DBE CONTRACTOR IDENTIFICATION STATEMENT**MDT DBE Participation Program**

9) For a Proprietorship, indicate the DBE status and gender of the proprietor:

Black Male _____ Black Female _____ Hispanic Male _____ Hispanic Female _____

Other Male (Specify) _____ Other Female (Specify) _____

10) Does the firm have an 8(a) Certification issued by the Small Business Administration under Section 8(a) of the Small Business Act as amended (15 U.S.C. 637 (a))?

NO _____ YES _____ Certified as an 8(a) Contractor (date) _____

11) Date certified as a DBE _____ Cert. No. _____ Expires _____

12) The undersigned agrees to provide other relevant information concerning ownership and control if requested to do so by MDC or its representative.

Signature of Official of DBE Company

Title of Official

Date

INSTRUCTIONS: Prime must complete a form for itself and must provide a form for each firm which was contracted as a potential subcontractor. An authorized representative of each firm must complete and sign this affidavit.

Firm Name _____ F.E.I.N.* _____

Street _____ Suite No. _____

City _____ State _____ Zip Code _____

Prime Bidder? Yes _____ No _____ If No, enter name of Prime _____

Year Founded _____ Annual Gross Receipts: Under \$500k _____ Over \$500k _____

Phone No. _____ FAX No. _____ Email _____

USE APPROPRIATE TWO-DIGITS SBA STANDARD INDUSTRIAL CLASSIFICATION CODE (SIC):

Construction: Building--SIC 15 _____ Heavy--SIC 16 _____ Specialty Trades--SIC 87 _____

Professional Services (Architectural, Engineering, Accounting, etc.) SIC 87

Goods, Equipment and Non-professional Services _____

Certificate Anniversary Date: ____/____/____ Ethnicity _____ Gender _____

I certify that I am an authorized representative of above named firm.

Signature _____ Print Name _____ Title _____ Date _____

Was the subject bid awarded to this bidder? Yes _____ No _____

Bid Description: _____ Bid No. _____

Percentage of DBE Goal	%
------------------------	---

DBE AFFIDAVIT OF NO CHANGE

I, _____, swear¹ (or affirm) that there have been no changes in (name of firm) _____ circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 and 13 CFR Part 121. I swear (or affirm) there have been no material changes in the information provided with (name of firm) _____ application for certification, except for any changes about which I have provided written notice to Miami-Dade County, pursuant to 49 CFR § 26.83(i).

I swear that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified in 49 CFR § 26.5, without regard to my individual qualities. I further swear (or affirm) that my personal net worth does not exceed \$750,000.00, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I specifically swear (name of firm) _____ continues to meet the Small Business Administration (SBA) business size criteria and the overall gross receipts cap of 49 CFR Part 26 and (name of firm) _____'s average annual gross receipts (as defined by SBA rules) over the previous three fiscal years do not exceed \$16.6 million. I will provide size and gross receipts documentation to support this affidavit, immediately upon Miami-Dade County's request.

Signature _____ *Date* _____

On this ___ day of _____, 20___, before me appeared (name) _____, to me personally known, who, being duly sworn, did execute the foregoing affidavit and did state that he or she was properly authorized by (name of firm) _____, to execute the affidavit and did so as his or her free act and deed.

(SEAL/STAMP)

Notary Public _____ Commission Expires _____

¹ Knowingly and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment or both.

SCHEDULE FOR PARTICIPATION**Instructions for Contractors: List your DBE firms and sign.****DBE FIRM (1):**

Name _____

Type of Work to Be Performed: _____

Percentage and Dollar Amount of Total Bid Committed : _____ % \$ _____

Proposed Commencement Date: _____ Proposed Completion Date: _____

DBE Firm (2):

Name _____

Type of Work to Be Performed: _____

Percentage and Dollar Amount of Total Bid Committed : _____ % \$ _____

Proposed Commencement Date: _____ Proposed Completion Date: _____

DBE Firm (3):

Name _____

Type of Work to Be Performed: _____

Percentage and Dollar Amount of Total Bid Committed : _____ % \$ _____

Proposed Commencement Date: _____ Proposed Completion Date: _____

DBE Firm (4):

Name _____

Type of Work to Be Performed: _____

Percentage and Dollar Amount of Total Bid Committed: _____ % \$ _____

Proposed Commencement Date: _____ Proposed Completion Date:--- _____

Under penalty of perjury of the laws of the United States, the undersigned certifies that it is committed to hire the above firms to do the work listed above on project _____, as part of its obligations under said project, and agrees to make the DBE & EEO Requirements of said project part of any tier of its subcontracts. The undersigned also certifies that the DBE listed on this Schedule are certified in the work categories in which they are being proposed to perform and that the Contractor has included language in its subcontracts to ensure that its DBE remain compliant with 49 CFR part 26, specifically Subpart 26.83(j).

Authorized Signature_____
Print Name and Title_____
Date_____
Name of Contractor

LETTER OF INTENT FROM DBE SUBCONTRACTOR, SUPPLIER AND/OR CONSULTANT

To: _____ and Miami-Dade County
(Name of Prime Contractor)

From: _____
(Name of DBE Firm)

The undersigned DBE is prepared to perform the following described services and/or supply the following described goods, in connection with the following project/contract for a total dollar amount of \$ _____ and certifies that, upon the execution of a contract with the Prime Contractor, it will not subcontract any part of such contract to any firm, at any tier, without obtaining prior written consent from Miami-Dade County, through the Prime Contractor; it further certifies that it has received from Prime Contractor a true copy of the Affirmative Action provisions, which must include the Davis Bacon requirements and wage determinations, if applicable.

The undersigned also certifies that the undersigned's Disadvantage Business Enterprise certification was issued to perform the specific types of work listed below. The undersigned further certifies that as of the date of this letter, the undersigned is compliant with all the requirements of 49 CFR part 26, specifically Subpart 26.83(j). The undersigned further certifies that the undersigned has submitted an Affidavit of Continuing Eligibility to its certifying agency with the last 12 months.

Prime Contractor _____ Project Name _____

DBE ASSIGNMENTS:

Item No.	Work to be performed	Dollar Amount Per Bid Form
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Item/Supply Description	Quantity	Dollar Amount
_____	_____	_____
_____	_____	_____

Authorized Signature _____ Title _____

Print Name _____ Date _____

SUBCONTRACTORS MONTHLY PROGRESS REPORT

Report Period: NAME _____	CONTRACT NUMBER _____ PROJECT _____
	CONTRACTOR NAME _____ CONTRACT AMOUNT \$ _____
	DBE GOAL _____ % DBE GOAL TO DATE _____ %
	PAID TO PRIME CONTRACTOR THIS MONTH \$ _____ TOTAL TO DATE: \$ _____

DBE FIRMS	SEX	ETHNIC	TYPE OF WORK/SERVICE	MONTHLY PAYMENT	PAYMENT TO DATE	CONTRACT AMOUNT

PAYMENTS TO NON-DBES	TYPE OF SERVICE	AMOUNT

I certify that the above information is true and accurate to the best of my knowledge and understand that if I misrepresent or falsify such information, I may be subject to civil and or criminal prosecution under Title 18 United State Code Section 1001.

Authorized Signature

Print Name and Title

Date